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VOLUME XX

FOR THE YEAR 1905

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The Year Books Series

VOL. III.

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Selden Society

YEAR BOOKS OF EDWARD II.

VOL. III.

3 EDWARD II.

A.D. 1309–1310

EDITED
FOR THE SELDEN SOCIETY
BY
F. W. MAITLAND

He [Serjeant Maynard] had such a relish of the old year-books that he carried one in his coach to divert him in travel, and said he chose it before any comedy.

ROGER NORTH

C'est toute la tragédie, toute la comédie humaine que met en scène sous nos yeux l'histoire de nos lois. Ne craignons point de le dire et de le montrer.

ALBERT SOREL

LONDON
BERNARD QUARITCH, 15 PICCADILLY
1905

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PREFACE

If I could have had my way, the name of Mr. G. J. Turner would have appeared along with mine upon the title-page of this volume. As, however, this is not what he desires, and as he cannot be held responsible for anything that is here published, I am bound to say the more explicitly that whatever merits this book may possess should in a large measure be ascribed to the help that he has given me. On the present occasion the work of searching the rolls of the Court in order to identify reported with recorded cases has been done wholely, or almost wholely, by him. Divers causes—among which I may mention the labour of collating a dozen manuscripts—would have made it impossible for me to produce this volume in due season, had not Mr. Turner come to my assistance. I am sure that the Society is not the loser, for Mr. Turner has found some cases that in all likelihood I should have missed, and I have good reason to be grateful to him for the generosity with which he has placed at my disposal his singularly accurate knowledge of our ancient forms of action. As I have been compelled to depend more and more upon photographs of manuscripts, I wish to add that those with which I have been supplied by the Clarendon Press, by Mr. Dunn of the Cambridge Library, and by Mr. Donald Macbeth of 'The Artists Illustrators

(Limited),' are all that could be desired. Even when the sun is the transcriber, a copy can never be quite as good as the original book; but, on the other hand, something that would not otherwise have been noticed will sometimes become apparent when photographs of various manuscripts which live in different libraries are placed side by side and physically collated. To Mr. Lock's advice and encouragement I owe a great deal. Once more I have the pleasure of thanking him.

F. W. M.

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INTRODUCTION

The time has come when something ought to be said of the manuscripts that we have been using for the compilation of this volume and its two predecessors. The tale that has to be told cannot be very brief, and we must add that it cannot be satisfactory. Still in the course of it we may be able to disclose a state of affairs which will not be wholly devoid of interest in the eyes of students of English history. Two or three preliminary remarks may be offered before we approach our manuscripts.

These Year Books are Law Reports; but the term 'Law Reports' is apt to imply a good deal that did not exist in the days of Edward II. or for a long time afterwards. For one thing, it is apt to imply the art of printing and the production of a large number of copies which shall differ from each other in no material respect. For another thing, it is apt to imply what we call 'publication.' The man who wants a book nowadays has not to order a book to be made for him as he would order a coat to be made for him; he buys a ready-made article. That was not the case, or at least it was not the common case, in the Middle Ages. There were indeed men whose business it was to copy books; they would make you a copy to order if you supplied the exemplar, and occasionally copies of some very useful books might be made in the hope that they would attract purchasers; but to our idea of 'publication' there was hardly anything that answered. If you had composed a treatise, you might for love or for reward allow some one else to transcribe it; but the transcription would be his business, and he would be very free to deal with your text in any manner that pleased him: to make omissions, additions, improvements, blunders. The copy was to be his, not yours, and copyright there was none.

Secondly, the term 'Law Reports' inevitably suggests to us books that are to be cited in court. It is true that our modern reports serve

more purposes than one. They have an educational value. Young men will read them in order to learn the law, and older men will read them in order to amplify their knowledge. Still on the whole we might say that to serve as 'authority,' to be the base of judgments and of 'opinions' that should forestall judgments, is in our own time the final cause of the report. Now when we turn to these earliest Year Books this final cause seems to fall far into the background and almost to vanish. If these books themselves prove anything, they prove that they are rarely, if ever, cited by counsel or justices. The voucher of a precedent is, to all appearance, an uncommon event. We shall hardly find more than a couple of instances in any one term; and when the voucher comes, it looks much more like a personal reminiscence than a reference to a book. It will begin with 'I saw,' or 'I remember,' or 'Don't you remember?' and when Chief Justice Bereford recalls a case in this way, the reporters do their best to write down the tale that he tells, for it is unknown to them but memorable. No contrast could be stronger than that which we find between these vague vouchers, if vouchers they may be called, and Bracton's precise citations of cases that stand upon the plea rolls. Having regard to what Bracton did, we may indeed say that already in his time the English common law showed a strong natural inclination to become the 'case law' that it ultimately became; but, free access to the records of the Court being impossible, a long period seems to elapse before this tendency can prevail. If the judges of the fourteenth century had allowed counsel to cite reports, then, the art of printing being still in the future, some stringent measures would have been necessary to insure that books were exactly copied. A little acquaintance with the manuscripts that we have been transcribing would be enough to show that the justices could not have treated them in the way in which a modern judge can treat a modern law report. Those manuscripts differ in every conceivable way. Every citation would begin a new dispute.[1]

Why, then, were these books made? The answer we take to be: Because young men wished to learn the law and to become accomplished pleaders. Before we say more of these young men who, to our thinking, are the begetters of the law reports, a few words about their elders may be in place. The group of men that is here set

[1] See in Y. B. 11–12 Edw. III. (Rolls Ser.), p. 613, what looks like an early attempt to cite a case from a book. 'Vostre livere est faux' is the reply. See also Mr. Pike's remarks, Y. B. 12–13 Edw. III., p. xxiii. In the present volume (below, p. 25) Bereford, C.J., says, 'If you have that rule in your book, it fails.' But this may refer to one of the treatises.

before us as actively developing the law of England is very small. First there are the judges; but it is to be observed that the three justices of the King's Bench (Brabazon, Roubury, and Spigurnel) are doing very little that is treated as reportable. They are trying cases that are of importance to litigants, but not, as a general rule, cases that involve delicate pleading. Broadly speaking, we may say that these reports are 'Common Bench Reports,' though a few cases before the justices of assize are noted, and there are reports of eyres that have never yet been printed. Then in the Common Bench there are six justices, namely, Bereford, Trikingham, Stanton, Scrope, Benstede and Bourne; but the last two of them are as yet 'mute persons,' and Trikingham is but little better. The administration of the law, so far as we see in these books, is mainly the work of three men: the experienced chief justice, Hervey of Stanton and Henry le Scrope. Then there are about twenty-four counsel in practice. So far as we have gone, a list of the lawyers who are named in the reports for a given year will be almost exactly the same as a list of the 'narratores' whom the plea rolls will set before us as having levied fines in the same year: in other words—and this is the point of our observation—we have seen no trace of any class of counsel who have a right to be heard in some but not in all cases: in personal but not in real actions. Some lawyers were much busier than others; still it may be said that, with few exceptions, if a man's name appears once in these Year Books, it soon appears pretty often. Lastly, we will notice that it is not unusual to see three or four lawyers on the same side of the same case. In a truly important case near half 'the practising bar' may be retained.

Outside this small group of active practitioners, there stand the 'apprentices,' the learners, and it must occur to us that they had a great deal to learn, and few means of learning it. We may indeed suppose that to a young man of this time the law that the justices and serjeants discussed did not seem quite so technical, quite so arbitrary, as it appears to us. He could see the social and economic import of rules which we are tempted to regard as perverse displays of ingenuity. Still it is plain that a beginner had a great deal to learn: the mechanism, we might call it, of some thirty forms of action. And it is to be observed that the trenchant statutes of Edward I. had certainly not simplified the law. On the contrary, as is abundantly shown by these reports, they were constantly giving rise to new questions. The first courses of that vast structure of interpretation which we know in the shape of Coke's Second Institute

were being reared. Another effect of these statutes deserves a word in passing. These apprentices had no text-book that could be relied on, and in particular none that could be relied on for procedure and pleading. Bracton's treatise was becoming antiquated, and neither the book which we call 'Britton' nor that which we call 'Fleta' had successfully assimilated the new statutory law. If then these learners were to learn, it would have to be by attending the court and listening to what was said. Their progress would assuredly be more rapid if they took notes of what they heard, if they borrowed and copied and discussed each other's notes. It should not be forgotten that for long ages afterwards students and full-fledged barristers and even men who are in good practice will sit in court taking notes that they do not intend to publish; only what in the day of printed books is but a subsidiary method of acquiring knowledge must in the old days have been the chief method. Roger North tells us how his brother, when he was king's counsel and solicitor-general, spent 'his vacant time' taking notes in the King's Bench: 'he sat within the bar with his note-book reporting as the students about the court did.' As a student he had been industrious: 'whenever he was in the way of learning anything, [he] never failed to have his note-book, pen and ink ready,' and then almost every day 'he posted his gatherings into a fair book.' The biographer proceeds to make a remark which we may have occasion to remember: 'A young reporter's note-book is so disorderly wrote, or rather scratched, that none but himself, nor he, after a few days, can make anything of it.'[1]

This we believe to have been the origin of the Year Books. They, or rather the earliest of them (for we would not speak of an age that we have not observed), are students' note-books. Only thus can we account for some of those facts which will be given in evidence hereafter. Meanwhile, however, let us follow our hypothesis a little further. Willingness to lend, to borrow, to co-operate, we may take for granted. We are among young Englishmen. Also we are among the founders of those societies, four of which become eminent as 'the inns of court.' These young men come up to London for term time; there is plenty of good fellowship among them; they club together; perhaps they jointly hire a house. Perhaps they are already devising 'moots' or other exercises which are destined to become more and more academic, and, at all events, we may believe that they talk a good deal of 'shop.' This is the atmosphere in which note-books multiply. When, therefore, we have before us a dozen manuscripts

[1] 'Lives of the Norths' (1826), i. 32, 104.

purporting to contain the reports of a single year, we must not be surprised if the relationships between them are intricate in a very high degree. The assumption that every codex is the offspring of one other codex is a natural starting-point if we would draw a pedigree; but in such a case as ours it may well be fallacious. Our case, indeed, is peculiar. The only people who want these reports live in constant intercourse with each other, and it is not at all impossible that all the copies that exist are to be found within one square mile of the earth's surface. A religious house may keep a Glanvill or a Bracton, a volume of statutes and a register of writs; but manuscript Year Books rarely come to us from monastic libraries. If, then, a man wanted to have a copy of his own, he might easily borrow two or three books from two or three friends, and then he could pick and choose what pleased him best, looking now at one book and now at another.

Moreover, if we regard these books as note-books, we have to remember that a lawyer, like any other man, is entitled to put into his note-book all that he wants and to omit therefrom all that he does not want. He may say, 'That case is not likely to be useful, and I shall not copy it.' He may say, 'That report is too long, and, parchment being expensive, I shall curtail it or condense it.' To omission, curtailment, condensation, we could raise no objection. But further, we cannot feel sure that the medieval lawyer did not consider himself entitled to expand as well as to condense: to say 'This bit of argument is very ill put, and I can improve it,' or 'A material fact is missing in this report, and I think that I can supply it by conjecture,' or 'Really this case wants rewriting from beginning to end, and I shall rewrite it.' Such doings might seem unjustifiable to us; but then we have it in our minds that law reports are 'authority,' and that may be a prejudice which we ought to remove. Let us remember that until lately in the chambers, not only of conveyancers, but of special pleaders and equity draftsmen pupils were busily engaged in copying manuscript precedents. Access to your master's precedent books was no inconsiderable part of the return that you obtained for the fee that you paid him. In this way an enormous mass of manuscript must have been compiled. Now let us suppose an editor attempting to re-establish the true text of the bills and answers of that eminent equity draftsman Mr. A. B. or of the declarations and pleas of Mr. C. D. the famous special pleader, and having no better material than the precedent books compiled by the grandsons in law of these distinguished gentlemen, or, in other words, the pupils of their pupils. We do not envy such an editor his task. Pupils will at

times be careless, drowsy, frivolous. But that is by no means all. They will alter the precedents that they copy to meet changes in the law or changes of fashion. What is more, they will sometimes be wiser than their masters, at all events in their own esteem. They will begin improving the transmitted text, and then belike they will discover that consistent improvement is a difficult or a tedious business and after a while will fall back on straightforward transcription. They will remember, or they think that they will remember, what they themselves have done, and, after all, these books of precedents are intended for no eyes but their own. Now we do not say that the analogy is perfect, still we imagine that the lawyer of Edward II.'s day regarded his copy of reported debates rather as we should regard a manuscript volume of precedents in pleading than as we regard our law reports. He studied it in order that he might be prepared to make the correct moves, 'the book moves' we might call them, in the complicated game that he was learning to play; but he did not think that the Court would be bound to decide a given case in a given way because he had a similar case in his book. It was with no sense of responsibility to the public or to anybody but himself that he made his collection of cases, and he felt himself free not only to omit, to curtail, to condense, but also to polish, to augment, to explain and even to rewrite, if thereby he could make his precedents more instructive.

Another remark that occurs to us is that some rewriting, something more than literal transcription, there had to be before some of those reports that we see could be produced. How much our reporters got down on to parchment while they were still in court we cannot say; but it is highly improbable that they got down nearly as much as we see in these books. Medieval stenography, it should be remembered, aimed rather at an economy of parchment than at an economy of time. Instead of writing *personam* in full, you may write only the letter *p*, draw a straight bar through its lower limb, put a little *a* at the top of the *p* and then a 'tittle' above the *a*. You will have saved an appreciable amount of parchment, but whether you will have saved any time must be doubtful. We can gain a little time by 'exors admors and assns' and our ancestors could do the like by writing *hr̃* for 'heir,' but this would not enable them to keep pace with those sharply interchanged remarks which are represented in the liveliest of their reports. To be concrete, we fain would know what was actually written down in court while Bereford was telling the following fable: 'Once upon a time a man lay sick abed, and so weak

was he that he swooned and lay in a trance, and it seemed unto him that he came unto a certain place and there saw three pair of gallows, each one higher than the last; and on the shortest hung his grandfather, and on the mean his father; and he asked wherefore it was so; and one answered him and said that his grandfather did a disseisin and for this trespass was hanged, and after him, for a continuance in the wrong, his son was hanged higher, and the highest pair of gallows was for his own proper use when he should be dead for his yet longer continuance in the wrong. So do not you trust too much to what you say about your doing no wrong in continuing the estate of your ancestors!'[1] It seems to us very possible that all that went down on the parchment while the chief justice was delivering himself of this grim little story was *Ber. Trois peires de fourches.* And so in similar cases. The short note written in court would have to be expanded afterwards by aid of a memory that was not infallible, and we must reckon with the possibility that the same note was expanded by two different collectors into two reports, which, while they agree in substance, have hardly a phrase in common.

From the year 1454—from a time, that is, when law-reporting had been going on for more than a century and a half—we have a report of a case in which Prisot, C.J., made some interesting remarks about the authority of previous decisions. A certain point has been decided, he says, a dozen times 'in our books,' and if now we were to disregard these precedents, that would be an ill example to the young apprentices, who are studying in 'terms,' for they would never give credence to their books if the contrary to what has often been adjudged in their books were adjudged on the present occasion.'[2] That is what strikes the chief justice: we must follow past decisions, for if we do not, these young men will cease to study their Year Books, or rather their 'Term Books,' and we shall have no learned lawyers. This is an instructive, if it is to us a somewhat curious, way of stating the matter, and it makes our English 'case law' appear as the effect rather than as the cause of law reports.

Lastly—for we must bring to an end these preliminary remarks—let us recall the fact that when we are dealing with the reports of a much later time, especially the seventeenth century, we have no scruple about saying that there were reporters and reporters, and

[1] See vol. ii. p. 117.

[2] 33 Henr. VI. f. 41 (Mich. pl. 17): 'Et, Sir, si ceo serra or adjugé nul plè, come vous tenés, verament ceo serra mal ensample as juvenes apprentices, que sont studients en Termes, car ils ne unques voillont doner credence a lour livres si tiel jugement, que ad esté auxi moult fois ajugé en lour livres, serra or ajugé le contrary etc.'

that if some of them did their work admirably well, others did their work very badly. Strong words concerning certain reporters have fallen from the Bench before now, and until recently a well-read lawyer was expected to know that this or that volume was, to put it mildly, 'not a book of high authority.' We suppose that the veriest beginner might be heard to say in court that some case reported by Keble, or Siderfin, or Comberbach is worthless. But the further back we go from our own age, the more unwilling are we to make similar remarks about the reports that come to our hands. This is very natural. We feel that we can understand the law of Charles II.'s reign. We have a great mass of information about it, and we can realise its practical import. But who are we—this question must often arise in an editor's mind—who are we that we should be talking of the law of Edward II.'s reign with that sort of confidence which would justify us in condemning a report as obviously incorrect? Do we really understand the mechanism of those real actions so well that we can affirm that a certain case must be misreported? An editor is shy of saying anything of the kind. The proverb about the workman who complains of his tools is one that we repeat to ourselves in order that we may not hear it from others. And yet, if we make a rational estimate of probabilities, we shall be inclined to guess that the worst reports of the seventeenth century have their peers in some of those notes of cases which come to us from the hands of the medieval apprentices. Of apprentices some are idle. But perhaps we have dwelt too long among generalities.

Besides the manuscripts that we have seen, there is, or once was, a manuscript that we have not seen, but which Selden saw in the library of the Inner Temple, and it gave him, so he thought, a very interesting piece of information—to wit, the name of the reporter or compiler. That book is no longer to be found where Selden saw it, and we are assured that there is no evidence of its having been there for a long time past. The late Mr. Inderwick, who could speak with authority on this point, kindly told us that he did not think that the loss could be attributed to any of those conflagrations that occur in the history of the Temple; so there is room for hope that the missing volume will once more come to the surface: *latitat et discurrit*. Meanwhile we must make the most of what Selden has told us.

In the Dissertation that is appended to the edition of Fleta he has been speaking of the fate of Roman law in England, and has brought down his story to the days of Edward I. Then he writes as

follows (we translate his Latin [1]) :—'What we have said of this age is further confirmed by what occurs in the Year Books [2] of King Edward the Second, beautifully copied from the manuscript of Richard of Winchedon, a contemporary, and, so it would seem, the original compiler thereof, and presented by John Baker, knight, Chancellor of the Exchequer under King Philip and Queen Mary, to the Library of the Inner Temple, of which he was a member.[3] For there not only are the very words of the Imperial Law and of its maxims quoted in a general way in the course of argument before the King's judges, though without express allegation of the places whence they come—a practice which even at the present day our lawyers occasionally follow—but sometimes it is admitted that the case turns on the Civil or Imperial Law, and sometimes the texts of that Law are designated according to the received method of citation (*tralatitium citandi morem*). Of the manner in which reference was made to the force or reason of the Civil Law as the ground, or what was then thought to be the ground, of the decision, the following is an excellent example. A Statute said [4] :—"If depredation or rapine be done to Abbots, Priors, etc. etc., and they be prevented by death while prosecuting for the depredation before they have obtained judgment, their successors shall have actions for recovering the goods of their church from the hands of the trespassers." Seius despoiled Titius,[5] Prior of Wallingford, of his goods. Titius is deposed and Sempronius is placed in his stead, and he brings an action in this behalf against Seius.[6] Seius excepts on the ground that Titius is still alive and therefore was not 'prevented by death' according to the Statute on which the action was founded. But it was decided (as it was already decided in Edward I.'s time [7] and also two years earlier in the case of the Prior of Llanthony [8]) that this exception was ill-founded, the following reason being added and being somewhat discussed and disapproved on the ground of the Civil or Imperial Law

[1] 'Dissertatio ad Fletam,' p. 528.

[2] 'MSS. in bibliotheca interioris templi. Vide ibi 1 Ed. 2, fol. 2.'

[3] The exact wording is important: 'Quae diximus eo de seculo firmatur [*corr.* firmantur] etiam ex eo quod occurrit in annalibus juridicis Edwardi regis secundi, e Richardi de Winchedon coaevi, ac primi ut videtur eorundem consarcinatoris codice perpulchre descriptis, et a Joanne Bakero . . . bibliothecae . . . donatis.' What Baker gave was, in Selden's opinion, not Winchedon's codex, but a copy of it.

[4] 'Stat. Marlebrig. cap. 30, 52 Hen. 3.' It is cap. 28 in modern editions.

[5] Probably Selden does not mean that these classical names occurred in the MS. Mr. Turner has found this case upon De Banco Roll, No. 225, r. 18, Berks.

[6] 'Mich. 12 Ed. 2, fol. 151a.' This will be a reference to the MS.

[7] 'Temp. Ed. I. Fitzherb. tit. Trespas, 242.'

[8] 'Pasch. 10 Ed. 2, fol. 133b.'

by the original writer, and then being approved on the same ground by the copyist:—"Quia duplex est" (so run the words of the manuscript) "mors, et naturalis et civilis, et in hoc casu mortuus est Prior quia dignitate privatur. Sed clericus qui librum istum scripsit, videlicet Richardus de Winchedon, dicit quod salva pace seniorum suorum, et salvo meliore judicio, minus bene dicunt, quia quamvis dignitate privatur, morte civili non est affectus." So far Winchedon. But the copier of the manuscript has added his own opinion also. "Sed hujusmodi privatio dignitatis," says he, "vocatur, prout memoriae meae occurrit, in jure civili, media capitis deminutio. Sed hic mortuus est civiliter qui efficitur servus poenae, licet nondum mortuus; sicut etiam qui deportatur in insulam, id est exulat, velut is cui aqua et ignis sunt interdicti, ut utlegatus." The same decision is reported in a manuscript of the Year Books of the same reign in the Library of Lincoln's Inn,[1] but the reason is given only as follows: "Quia duplex est mors, scilicet civilis et naturalis, et in hoc casu Prior fuit mortuus quia dignitate privatur jure civili." . . . On two other occasions I observed, in that manuscript Year Book at the Inner Temple, the Pandects cited in the accustomed manner by titles and laws. The one passage is in the fifth year, where there is an action on a covenant whereby the defendant promised to take the plaintiff to wife and in the meantime to supply her with aliment. The question is whether he was bound as though he had promised to perform at once; and Hervaeus the plaintiff's advocate [or rather Hervey of Stanton, justice] said: "Si jeo me oblige a uous en m. li. et en l'escript il ny ad pas jour de paie, nest pas la dette due maintenant apres la fesance del escript? Certes cy est." And he gives a reason out of the Civil Law thus:—"In omnibus obligationibus quibus dies non ponitur praesenti die debetur, ff. de regulis juris, l. in omnibus"; and those are the words of Pomponius in l. 14 of that title [Dig. 50, 17, 14], whence they are here expressly vouched. But in the Lincoln's Inn MS. I have not found any note at all of this case. The second instance occurs in the twelfth year of the reign where one Seius brings an action for goods taken away against the Abbot of Abingdon. The Abbot excepts that in Abingdon it has always been the custom that anyone who there brewed and sold beer should pay to the Abbot one penny (called Colchester[2] penny) to the Abbot, and that if it were not paid, the Abbots had always by that custom a right to take a

[1] This will be our MS. *D.*

[2] The word has been corrupted. It should be 'toll sester.' The penny represents a sester (*sextarius*) of malt or beer paid by way of toll.

distress (*pignus*) from the goods of him who ought to have paid it, and that Seius had brewed and sold and had not paid, and that therefore the Abbot had taken the goods by way of distress. Thereupon Devonius [or rather Denom], the advocate for Seius, says that this custom grew up without reason and to the injury of others, and that the Abbot could not thereby enjoy any right against the plaintiff: "Quia quod non ratione introductum est, sed de errore primo, deinde consuetudine obtentum, in aliis similibus non obtinet, ff. de legibus, lege, non obtinet." These are the very words of Celsus in l. 39 of that title [Dig. 1, 3, 39], and are thence cited by Devonius before the King's judges, just as that other *lex* from the title "de diversis regulis" was previously cited by Hervaeus. Moreover, there is added in the margin in an old character: "Nota loye. Nota." For the rest, in the Lincoln's Inn MS. that we have mentioned, although this case is in other respects inserted in almost the same words, a citation of this kind is not to be found.'

So far Selden. Now the first of the three passages cited by him deserves our best attention. Apparently one and the same hand—for Selden would have noticed a change of hand—had given the report of an action by the Prior of Wallingford, and, after telling how it was decided in the plaintiff's favour, wrote in Latin all that here follows in English: 'for there are two kinds of death, natural and civil, and in this case the prior is dead, for he is deprived of the dignity. But the clerk who wrote this book (*qui librum istum scripsit*), namely, Richard of Winchedon, says, with all due respect for the judgment of his elders and betters, that this is not well said, for, although he be deprived of his dignity, he has not incurred civil death. But such a deprivation, if I remember rightly, is called in the Civil Law "media capitis deminutio." But one is civilly dead if he is condemned to penal servitude, although he be not yet [naturally] dead: as is also the case with one who is deported to an island, that is, banished, as also of one to whom fire and water are interdicted, that is, who is outlawed.' Selden supposes that three different opinions are put before us. The court's decision is supported by the statement that the prior, being deprived, is civilly dead; then comes Winchedon's assertion that the prior is not civilly dead; then a third person, so Selden thinks, controverts Winchedon and approves the judgment. It were rash indeed to dissent from Selden, especially when he sees the manuscript and we do not; but we cannot feel sure that his interpretation is correct, our reason being that the argument adduced against Winchedon, if it be adduced against him, seems

singularly feeble. Does not Winchedon go on to the very end of the note, though in a fashion that is not very unnatural he exchanges the third person for the first? Let us paraphrase the passage. 'Richard of Winchedon who wrote this book says in all humility that deprivation is not civil death. But if my memory serves me, deprivation of a dignity is a *media capitis deminutio*, [but not civil death]. Civil death occurs in cases of penal servitude, banishment, and outlawry.' If that be so, then Richard of Winchedon comes before us as the scribe who wrote, not some parent manuscript, but the very manuscript that Selden saw (and our strong inclination is to take *librum istum scripsit* to signify the putting of ink on this piece of parchment), but in any case we do not see the proof that Winchedon was the original compiler.[1] We must be diffident. Selden never 'spoke without book,' and in this case he spoke of a book that had been under his eyes and has not been under ours. We can say no more than that, 'salva pace seniorum nostrorum et salvo meliore iudicio,' we cannot quite follow his argument. He seems to us to have been misled by what is in our view a not unpardonable fault in Winchedon's grammar: namely, a lapse from the third to the first person; but possibly he had other evidence which proved that Winchedon was the scribe, not of the Temple manuscript, but of one which served as its exemplar.

Whether the Temple manuscript was the head of a family we are not able to decide. All that we can say upon this point is that if the progenitor of the extant manuscripts contained those two express citations of the Digest which Selden has transmitted to us, then this feature of the ancestor was not reproduced in the progeny. We have not found in any of our books these citations nor any citations of a similar character. Some legal maxims appear from time to time, as they appear in more modern reports; but nowhere have we seen a workmanlike 'ut ff.' That these vouchers of the Corpus Juris would be omitted by copyists is indeed not improbable; but we think it equally probable that some unusually learned transcriber would insert them by way of ornament in the book that he was making. And here it may be observed that Richard of Winchedon calls himself a *clericus*. This, we take it, implies that he was at least in minor orders, and the same could not, we believe, be said of the ordinary apprentice. For the rest, we can only say of Winchedon—but indexes

[1] Apparently by 'primus consarcinator eorundem (scil. annalium iuridicorum Edwardi regis secundi)' Selden would mean 'the first compiler' of these Year Books, and not necessarily the original reporter.

and calendars entitle us to say this much—that, however learned he may have been, he never became a distinguished lawyer or indeed in any way a distinguished man. Nor can we part from him without the remark that, if he was the author of the passage about civil death, his acquaintance with the text of the Institutes was by no means as close as it might have been. He ought not to have said that deprivation of a dignity is a *capitis deminutio*, unless he chose directly to controvert the words of the imperial text-book: 'quibus autem dignitas magis quam status permutatur capite non minuuntur; et ideo senatu motos capite non minui constat'.[1]

Of the manuscripts that we have seen perhaps the most interesting is that which we are calling *Y*. It is a portly and handsome volume of 292 large folios. Its margins are ample, and the text looks as if it had been written by professional caligraphers, who have adorned its pages with some red and blue capitals. When we compare it with its fellows, we are inclined to call it an *édition de luxe*. Unfortunately, it is not in the strictest sense a volume of Year Books. It contains a large supply of reported cases proceeding from the last years of Edward I. and the first of Edward II. These are arranged, not in a chronological order, but in what we might call a 'topical' order: that is to say, they are brought under such legal rubrics as 'De nova disseisina,' 'De brevibus de ingressu,' 'De forma donacionis' and the like. Then a side-note sometimes, but by no means always, assigns the year and term to which a given case belongs. The cases of one term generally occur together, provided that they belong to the same form of action. A member of the staff of the British Museum, who has recently written a careful account of the book,[2] says that none of the cases are later than 5 Edward II. (1311-2) and that nearly all fall between 1300 and 1312. He assigns the book itself to 'circ. 1312,' and we have seen nothing that in any way conflicts with this judgment.

One interesting trait of this book is the unusually large number of Latin records that occur among the French reports. In some instances a precise reference to a particular *rotulus* is supplied. Of a yet more interesting trait we said a word last year;[3] but a little more must be added. Interspersed among the reported debates in court,

[1] Inst. 1, 16, 5. Still, as Selden, with a citation of Odofredus, remarks, the contrary seems to have been held by some medieval legists.

[2] Catalogue of Additional MSS., 1894–1899, p. 168.

[3] See vol. ii. p. xv.

we find notes of debates or conversations which took place out of court. Perhaps the most curious of these is that which we noticed in our second volume, and which is said to have occurred 'en le Cribbe.' First we read the report of a replevin action which was pleaded by Scrope and Toudeby, who were two of the leaders of the bar. 'Afterwards,' so runs the book, 'it was told in the Crib how he [Toudeby] was received to take exception to the lambs and not to the sheep.' Then 'Richard de Aldirb' ' reported how John of Lancaster was party to an assize in which something happened that was relevant to the debated question. And then John Trevanion took a distinction. But this story we have already told. We must now give a few more illustrations, asking our readers to pay regard less to the substance of these notes, which is occasionally obscure, than to the manner in which they have been obtained.

Note[1] that a fine levied upon a render will not bar the assize of novel disseisin, although no claim be put in within the year and day; as appeared before W. de Ber[eford] and W. Inge, justices of assize at Stamford, in the first year of the now king [Edward II.]. But R. Alburn said that it [the fine] extinguishes every real action. But, as I believe, the [assize of novel] disseisin savours of the nature of a personal [action] and therefore [it is] not extinguished.

Note[2] that a quitclaim made by the lord of the fee to a disseisor will profit the disseisee, because services, when once extinguished, cannot be revived without a new title. Alburn and Wallingford said that the disseisee cannot recover anything else [than that of which] he was disseised—neither more free, nor more charged [than it was when the disseisin occurred]; for a quitclaim profits him to whom it is made and those who have entered through (*par*) him; and the disseisee did not enter through (*par*) the disseisor, nor *vice versa*.

A question[3] asked of many (Questio a pluribus quesita). Note that a quitclaim in the hands of a termor does not bar the assize of novel disseisin; but in favour of the termor the Justices will inquire of the assize as to the quitclaim so as to save him his term; and the reason why it does not serve as a bar is that if the assize be brought against the lessor and the termor, then if the lessor make default, the assize shall be awarded etc. So it is

[1] MS. Y, f. 35. [2] MS. Y, f. 35d. [3] MS. Y, f. 35d.

manifest that it [*i.e.* the quitclaim] is not valid [as a bar] in the hand of the tenant [*i.e.* the termor].

Michaelmas[1] in the fourth year continued, where the younger brother made a quitclaim to the elder, and, notwithstanding that, brought the assize and recovered, as here appears. Note that two brothers purchased a carucate of land jointly, and afterwards the elder purchased a quitclaim from the younger, and then alienated the carucate to a stranger. The elder brother died. The younger entered the tenements. The stranger and others ousted him. He brought the assize of novel disseisin. The tenant [in the assize] did not plead upon the quitclaim[2] for [fear of the reply that] the deed was made [by one] under age and because of other perils apparent to those who consider the case;[3] but vouched to warrant one P. who was named in the writ. P. warranted, and said that he [the plaintiff] was never seised. The Assize comes and tells the facts as above. The Justices of Assize send the record into the Bench. Hervey [of Stanton, J.] had the parties called, and said: Since it is found by the verdict of the assize that the purchase was made by A. and B. his brother jointly, and albeit A. purchased from B. a quitclaim while he [B.] was under age, which is good for nothing, and it is found that A. alienated these tenements to C., and it is found that P. and C. disseised B., and that P. warranted C., therefore the Court awards that B. recover the moiety of this carucate of land and his damages against C., and that C. [recover a recompense] in value against P., and that C. and P. be in mercy. I have diligently inquired whether he would hold his moiety jointly or severally. Never found I two pleaders of one opinion (*nunquam inveni duos narratores sub uno dicto etc.*). Also Robert Sturrey told me there was a debate between Sir W. de Leyborne and Sir Robert de Burgeisshe (*sic*) in such a case, for the one wished that a partition should be made, and never by any counsel could he have remedy in this case (*et unkes par nu conseil ne poet il avoir remedie en ceo cas*). Ridynal said the same.

Memorandum[4] that Richard de Aldebur' told me that he was party in an assize of mortdancestor where the uncle entered after the decease of the brother. The nephew brought the mortdancestor etc. *H. Scrope.* He entered after the death of J. as brother

[1] MS. *Y*, f. 35d.
[2] But the text has *a la quit*.
[3] The text has *et pur altres perils ut patet intuenti.*
[4] MS. *Y*, f. 52d.

and heir and claims by the same descent [as the plaintiff]: judgment etc. *Aldeburn'*. He cannot claim against us, for a 'claim' lies in the right and we are within age: judgment etc. [Other reasons are given why there can be no claim.[1]]

Note that I have inquired whether 'claim by the same descent' lies as well in the mouth of a warrantor as in that of the tenant. Lancaster and Alburn said: Yes. I further inquired whether an uncle can 'claim' against his nephew. And they said: Yes, because of this word 'descent,' for from brother there is 'descent' to brother. Hauteber' said that the uncle can never 'claim' against the nephew because of the dignity of the blood, and because of these words 'by the same descent,' for the nephew and the uncle, although they be of one descent, are not of the same descent, for the one is lineal and the other collateral.

Note that although one parcener commits felony, the others are not thereby precluded from action. Albur' said that the others can have action without naming the felon and shall be answered. Hauteber' said that although he be named in the writ, he shall be severed as a man in the king's peace would be (*il serra severé com homme a la pees etc.*).

Note [2] that Richard de Altheborn' told me that within these three years he saw in a writ of entry *ad terminum qui praeteriit* that the demandant said that he [the tenant] had not entry except by A., who leased for a term that has expired; the tenant said 'in fee: ready to aver it'; the inquest came and said that the tenant had [the lands] from the father of the demandant for the term of his life; so the inquest gave its verdict neither for the demandant nor for the tenant; the record and verdict come before the full bench and Bereford says: As you have claimed fee where you had only term of life, the Court awards that the demandant recover seisin of the land for your false claim and that you be in mercy.

Note [3] that in a writ of entry *cui in vita* which Alice of St. Alban brought against C., she demanded certain tenements in N. *Hengham* [*J. de Ingham*]: We have nothing and claim nothing in the tenements. *Migg*[*eley*]: Tenant of the whole on the day of our writ purchased: ready etc. *Hengham* [*Ingham*] as before

[1] MS. *Y*, f. 37d. In the mortdancestor and other ancestral possessory actions the term 'claim' was technically used to signify a particular kind of defence.

[2] MS. *Y*, f. 92. [3] MS. *Y*, f. 92d.

demanded judgment of the writ. *Hervey* [*of Stanton*]: Let an inquest come. And because in the time of Ralph of Hengham [C.J.] a writ was usually quashed by this exception, many people wondered why this averment was admitted. York (Everwyke) told me that in the time of Sir John of Metingham [C.J. before Hengham] this averment was usually received, and the reason was because it would be a surer course for the party [demandant] to recover by the same process against the tenant than to oust another person from his tenancy by the feoffment of him against whom the writ was first purchased,[1] but the opinion of Hengham [C.J.] was that the demandant can enter without doing wrong to any, by reason of the date of the original writ and by the disclaimer of the tenant.

Note[2] in a case where beasts are adjudged not replevisable, and afterwards the tenant upon whose default the judgment was made comes to his lord, the distrainor, who is seised of the beasts, tenders the services for which he [the lord] avowed, and then the lord denies him his beasts because of the acquittance,[3] J. Denham answered me about this that he had asked Henry of Hales, who said that, at his [the tenant's] suggestion, he should have a writ [issuing] out of the rolls to cause a deliverance of the beasts to be made. *Claver.* I put case that when the avowry is made, the beasts are [once more] adjudged irreplevisable. *J. Denham.* Still he shall have a writ as before. *W. Denham.* I put case that the avowry is made upon someone other than him to whom the beasts belong. *J. Denham.* He shall have the same remedy. Then *Claver* further said: I put case that, when the tender was made, the lord demanded more than the tenements were charged with. *J. Denham.* You can put more cases than I can answer. *J. Lanc*[*aster*] said that this word 'irreplevisable' is to be understood to mean [irreplevisable] until a reasonable accord has been made with the distrainor for the services or for the other cause of the distress. And somebody else said that when he [the tenant] tenders the services, the force of the judgment is at an end, and then by the [subsequent] detention there arises another cause for replevin.

[1] That is, to oust from the land a person enfeoffed by the man against whom the writ was brought. Perhaps a feoffment after writ purchased is meant.

[2] MS. Y, f. 156d.

[3] Apparently 'the acquittance' is to be found in the judgment for a 'return irreplevisable.'

In this last instance the maker of this book has succeeded in starting a discussion upon an abstract question among men of some eminence, for the two Denoms—or Denhams, as he calls them—are in a good way of business, and Claver also is getting work. The diligence of the man who, having raised this inconclusive debate, hastens to make a note of it, is not the less remarkable because he has forgotten the name of one of the speakers and can only describe him as 'somebody.' Surely, also, he has preserved a bit of real life in John Denom's objection to being posed: 'Vous poez tant apposer qe jeo ne vous say respondre.' But what seems most worthy of remark is the reference to the opinions of men of whom we can say with some certainty that they were by no means distinguished lawyers at the time when this collection of cases was being compiled. The name which we read most frequently appears as Richard de Aldirb', R. Alburn', Richard de Aldebur', Albur', Richard de Altheborn', and so forth. This seems to point to Richard of Aldborough,[1] who became a Justice of the Common Bench in 1322, but who, so far as we can see, was seldom, if ever, pleading causes, or at all events reportable causes, in the first years of the reign. The same might, we believe, be said of the collector's other friends: of Sturrey, Ridynal, Hauteber', Lancaster, Trevanion, Hales. Whatever future may be in store for them, they are not at this time men of mark, though 'Ridenal clericus' was once in a position to contribute some information as to what had happened when the justices were deliberating.[2] On the other hand, we do not hear of conversations with 'the leaders of the profession,' with Herle or Toudeby, with Friskeney or Malberthorpe. We have noticed no passage in which the maker of this book discloses his own name. He is content to be merely 'I (*jeo*).' This we may regret, for evidently he was a keen and diligent student of the law, who talked matters out with his companions, and spent pains and time and money in producing for his own use a comprehensive repertory of current jurisprudence.

Apart, however, from the valuable hints that are thus given us, this is in certain respects a very good manuscript, and we may deeply regret that the cases are not arranged in chronological order. Someday, perhaps, when we or our successors have passed the fifth year of the reign, an effort will be made to procure from this source any cases

[1] Foss, Judges, iii. 390. As regards the spelling of the name, we do not think that the man who made this collection and who therein appears as *jeo* was himself the scribe of the manuscript, or at least of the major part of the manuscript.

[2] See below, p. 197. He may be John de Radenhale, for whom see Foss, iii. 482.

of Edward II.'s time that have not then appeared in print. Still we cannot say that this book is the parent of our other books. That is not so. It is not the parent of any one of them, for, as already explained, the arrangement of this book is primarily 'topical,' while our other books are in a strict sense 'Year Books,' and it is not likely that transcribers would be at pains, even if they were able, to re-establish a chronological order that had once been disturbed. But further, we cannot say that the reports that are given by this manuscript are the origin of all our other reports. That is not so. Sometimes another book offers what the record shows to be a better or a fuller version of a debate than that which we find in this volume. On the other hand, it occasionally stands alone in supplying what we would not have missed.

By way of illustration two little scenes in the Chancery may be recounted. To be brief, the Statute of Gloucester had decreed that if a doweress took upon herself to alienate in fee, the reversioner should at once have a writ to recover the land, the alienation being treated as a forfeiture.[1] A writ of entry was devised which expressly mentioned the statute: the so-called 'writ *in casu proviso*.' In principle no distinction could be drawn between the case of a doweress and the case of a tenant by the curtesy or of an ordinary tenant for life, and a famous clause in the Statute of Westminster the Second directed the clerks of the Chancery to make writs that would meet new cases if those cases fell under old principles.[2] Now those clerks, so it seems, devised writs for cases in which a tenant for life or tenant by the curtesy alienated in fee, and the writs stated that the alienation was made 'against the form of the statute in that case provided.' One such writ was brought before the court in the Hilary term of 3 Edward II.[3] Stephen Devereux, a remainderman, claimed to recover certain tenements which had been alienated in fee by two tenants for life. It was objected that 'non est aliquod statutum in in quo huiusmodi breve sit formatum,' and for this cause the writ was quashed. This we can learn from the record. We have two reports of the debate: we can bring nine manuscripts to bear upon it. What, however, concerns us at the moment is that MS. *Y* gives, and is alone in giving, a sequel:—'And afterwards Stephen complained in the Chancery that his writ was abated. The clerks of the Chancery caused W. Bereford [C.J.] to come and demanded of him why [he quashed the writ].—He said that it was not maintainable by statute

[1] Stat. Glouc. c. 7. [2] Stat. Westm. II. c. 24.
[3] *Devereux* v. *Tuchet*, inf. p. 16.

etc.—*Barneby* [that is, Robert de Bardelby, a Master in Chancery] The Statute of Gloucester wills that if women holding in dower alienate, the reversioner shall at once have his recovery; and Westminster the Second wills that *in consimili casu etc.—Bereford.* Blessed be he who made that statute! Make the writ and we will maintain it.'—The chief justice, so we understand, had never denied that a good writ could be made; only it should not say that the alienation was against the form of the statute in 'that' case provided. And that remained his opinion after his interview with the masters in chancery. Then in the Easter term of the same year another case came before the court.[1] A reversioner sued to recover the land that had been alienated in fee by a tenant by the curtesy. Once more the writ spoke of the alienation as having been made against the form of the statute in that case (*inde*) provided. Once more the writ was quashed. This we may learn from several reports, but only one of them, namely, that contained in MS. *Y*, adds what here follows:—'And afterwards the writ was considered in the presence of Bereford, Bardelby and Osgodby, and other examiners of the Chancery, and they amended the writ by the words "in like case provided."' Then our manuscript sets forth a writ in the new form—not, as the names of the parties show, a writ for the very case which had just been before the court, but a writ for a similar case, and apparently this writ was to be treated as a model. It states that an alienation in fee was made by a tenant for life, and that the land ought to revert 'by the form of the statute in like case'—not 'in this case'—'provided.' The general outline of this piece of legal history about the writ of entry *in casu proviso* and the writ of entry *in consimili casu* has long been known;[2] but we can now punctuate it with a date and some proper names, and that we can do so is one of the merits of the handsome volume of which we have been speaking. Whether these accounts of what was done in the Chancery stood in a manuscript which was the parent of our other manuscripts but were omitted by transcribers as unimportant, or whether the author of MS. *Y* from his own knowledge added something to reports that he was copying—that is a specimen of the questions that we cannot answer. We will give, however, another instance in which this same manuscript does good service, because we can thus say a word of one of the reasons why reports may differ from each other. We have a debate of which substantially similar accounts

[1] *Stirkeland* v. *Brunolfshead*, inf. p. 106. [2] Second Inst. 309.

are given by nine manuscripts.[1] Eight tell only of an inconclusive discussion. There is an action of replevin; the defendant avows; the plaintiff pleads to the avowry, and then there is argument as to whether his plea is good in law—argument but no decision. The ninth MS., our *Y*, adds—and the record shows that this is true—that in the next term the parties came to an issue of fact, the avowant retiring from the point of law.[2] On the other hand, other manuscripts may tell of the end of a debate when *Y* gives us only an unfinished argument. An instance of this occurs in the case of *Rasen* v. *Furnival*, of which we shall speak at some length hereafter.[3] We shall there see how, out of four reports given by six manuscripts, that offered by *Y* is in a certain sense the worst, because it breaks off before the pleaders have arrived at an issue. Not infrequently, as we may learn from the rolls, cases were adjourned from term to term for further argument, and, this being so, it is by no means inexplicable that one volume of reports should tell us more of a case than we can discover in other volumes. There is another reason why we should remember that in the course of medieval procedure a case often comes before the court on many different days before it is disposed of and even before issue is joined. There is some danger, to be exemplified hereafter, that if a reporter picks up a case by its middle, so to speak, he will state the beginning of it imperfectly and incorrectly. He may even invent some facts, which, so he thinks, will account for an argument to which he has listened, but when we look into the matter we may be compelled to say that his conjectures were rather ingenious than correct.

Before parting with *Y*, we may observe that its versions of the debates are sometimes distinguished by what in the language of modern journalism would, if we mistake not, be called 'vivid touches': by exclamatory, expletive, and proverbial phrases, and by the personal reminiscences of Chief Justice Bereford. One of the anecdotes which are thus recorded is of such general interest that we shall venture to print it here, though it will come before us again hereafter.[4]

> *Bereford.* In the time of the late King Edward [I.] a writ issued from the Chancery to the sheriff of Northumberland to summon Isabel Countess of Albemarle to be at the next

[1] *Mareys* v. *Cogan*, vol. ii. pp. 116–118.

[2] *Ferrers* v. *Vescy*, the first case in the present volume, is another instance in which *Y* shows this same sort of superiority.

[3] See below, p. xli.

[4] See below, p. 196.

> parliament to answer to the King 'touching what should be objected against her.' The lady came to the parliament, and the King himself took his seat in the parliament. And then she was arraigned by a justice of full thirty articles. The lady by her serjeant prayed judgment of the writ, since the writ mentioned no certain article and she was arraigned of divers articles. And there were two justices who were ready to uphold the writ. Then said Sir Ralph Hengham to one of them: 'Would you make such a judgment here as you made at the gaol delivery at C. when a receiver was hanged and the principal [criminal] was afterwards acquitted before you yourself?' And to the other justice he said: 'A man outlawed was hanged before you at N., and afterwards the King of his great grace granted that man's heritage to his heir because such judgments were not according to the law of the land.' And then Hengham said: 'The law wills that no one be taken by surprise in the King's court. But, if you had your way, this lady would answer in court for what she has not been warned to answer by writ. Therefore she shall be warned by writ of the articles of which she is to answer, and this is the law of the land.' Then arose the King, who was very wise, and said: 'I have nothing to do with your disputations; but, God's blood! you shall give me a good writ before you arise hence.'

It will, we think, be allowed that this tale of the King *qe fut mout sagis* and of the intrepid chief justice deserved unearthing. Once more we will express our regret that the manuscript which contains it is not so arranged that we can use it with ease. Better would it have been had we copied the whole of this book and sorted its contents before we began to edit the Year Books of Edward II. But this, even if we had enjoyed uninterrupted leisure, would have filled our time for two or three years. As it is, we may hope that we are not missing any large number of cases that we ought to take therefrom, and once more let it be repeated that, though the reports that this volume contains are often good, they are by no means always the best.

Leaving *Y*, we see two other manuscripts which lie outside the main mass. Our *Z*, which is at Lincoln's Inn, gives for Edward II.'s reign what we might call an 'Annual Digest.' The cases of each year—not of each term—are kept together, but within each year the arrangement is 'topical': that is to say, all the actions of a particular

kind—for example, all the actions of dower—are brought into a group. Then what appears as the representative of a case cannot fitly be called a report; it is merely an abstract resembling our modern 'headnotes,' and the names of parties, judges, and counsel are omitted. So far as we can see, this seems to be a well executed piece of work; but it cannot be of much service to us. Then a Bodleian MS., our *X*, gives extremely brief reports in chronological order. What we have here is rather compression than abstraction. The debate appears as a debate, the names of the judges and counsel being preserved; but every speech is pared to the quick. For example, a dialogue which elsewhere fills many lines is packed into the few words that follow:[1]—

> *Scrop.* Si W. voleit avouer sur nous, nous ne li porrioms oster.—*Herle negavit.*—*Scrop.* Vous ne porriez pas user vers nous bref de costumes et services de la seisine A.; ergo, etc.—*Herle.* Non sequitur.—*Scrop.* Si W. ust granté les services en court, lai ne chacereit A. de attorner etc.—*Herle.* Hoc non probat.

Here Herle's curt 'Non sequitur' (to take one instance) stands in place of 'It does not follow that because he cannot recover by writ of customs and services therefore he cannot recover by avowry; for many a man shall recover by avowry who shall not recover by writ of customs and services when the right of the services passes by means of a grant.' It has seemed to us by no means impossible that what a reporter set down while still in court was much like what this Oxford manuscript puts before our eyes, and that we may sometimes have to deal rather with expansion than with compression. That is an hypothesis which we have not yet laid aside. However, a variety of small indications, such as the corrupt state of the proper names, induces the belief that in this particular instance what is in our hands would be rightly described as a volume of compressed or curtailed reports. With due notice, we have occasionally appended to some fuller account of a debate the whole or some part of what this book, our *X*, says about it, for sometimes its pithy statements seem to shed some desirable light into dark corners.

We must now look at the main mass of manuscripts: ten in number (*A*, *B*, *D*, *L*, *M*, *P*, *Q*, *R*, *S*, *T*). As regards their antiquity

[1] *Marton* v. *Gisburn* (*Prior of*), vol. ii. p. 29.

we must speak with great caution. Of some of these books we can say with certainty that the portion that deals with the first years of the reign was not written in those first years, for the hand that writes it writes also the cases of later years, and, so far as we can see, there is no such break in its work as would be likely to occur if it were coming back to the task at intervals as new cases were decided. Still as a general rule a volume of reports of this time is a composite affair. Pieces written by different men in different styles have been bound up together, and the number of volumes which contain cases from every year of the reign is very small. On the whole, we should imagine that the great bulk of the script that we have transcribed and collated comes to us from the first half of the fourteenth century. Some more detailed information on a few particular points we may be able to give on another occasion. We greatly doubt whether a palæographer would assign any marked priority to any one of these books; but even if he did so, it would be plain that no one of them is entitled to be called the progenitor of all the rest. They differ in almost every respect.

In the first place, they differ widely as to the number of cases that they give. Altogether we obtain for the third year of the reign two hundred cases, little more or less—a surprisingly large number. But no one book contains much more than half of them, and some books contain far less. Then, as regards this matter, we have found it very difficult to arrange our books in stable families. We began, for example, with the belief that *A*, *B*, and *D* were closely related and stood well apart from another group, of which *M* and *P* were representatives. This hypothesis served us well in the first two years of the reign. At the beginning of the third, however, *B* began to stray away from *A* and *D*, sometimes approximating to *M* and *P*, and sometimes taking a line that is all its own. On the other hand, *Q*, which had been an ally of *M* and *P*, joined itself to *A* and *D*, and throughout the third year *ADQ* is a compact group, though, owing to the loss of some leaves, *Q* deserts us before the end of the year. With *M* we may couple *P*; and with *S* we may couple *T*, though, owing to the loss of some leaves, *T* does not begin to help us until the year is advancing. Thus we shall for the third year have three groups which we may call *ADQ*, *MP*, and *ST* respectively. Then, if we ask what cases are reported, we shall have almost every, if not quite every, combination. In particular we shall have cases that are given only by *ADQ*, cases that are given only by *MP*, and cases that are

given only by *ST*. We shall also have cases that are given only by *B* and *L*, or only by *B* or only by *L*.

A few approximately correct figures may be acceptable. We will put the total number of cases at 196. We select four of the amplest books, namely *A*, *B*, *M*, *S*. According to our reckoning, *A* contributes 98 cases, *B* 104, *M* 108, *S* 95; but there are only 40 cases given by all four. Then there are 38 others given not by all four but by some three of them, and all the possible combinations of four things taken three together are represented, though the appearance of one of them (*ABS*) is very rare. Also there are cases given by two books and no more, and every possible couple, except *AB*, seems to be represented. Then every one of the four books gives from 10 to 20 cases that are not given by any of the remaining three. Finally there are nearly 20 cases that stand in none of the four, but are brought in by such outlying manuscripts as *R* and *L*.

Taken by itself, this bare fact might be explained by the supposition of some large book, not seen by us, which contained all the cases, and whence different transcribers took what suited their needs and their tastes. That selection there has been we do not doubt, and on the whole we may say that what seem to us the best cases are those which are represented in the greatest mass of manuscripts; but then it is to be remembered that cases which are thoroughly intelligible are likely to seem to us the best cases, and that cases which are found in many manuscripts are likely—we may hope it—to be intelligible, while one slip of one pen may ruin a case if we have no second book. We must add, however, that some debates which are both interesting and, to all appearance, well reported occur only in one of our three groups, or only in a single book.

But the facts that we have to meet are vastly more complicated than such as could be accounted for by the hypothesis that different people copied different parts of one manuscript. We have to deal with different reports of the same case, and the exact point at which this phenomenon begins to appear is hard to fix. What we mean can be explained if the reader will suppose himself to have copied one manuscript and to be collating another. For a while he may find that the differences between the two can be fairly represented by a text with variants. He sees innumerable differences in spelling, he sees many differences in wording, he notices that phrases or clauses that are in one book are not in the other. Still a text with footnotes might fairly represent the result of his labour. Then, however, he will come upon an instance in which he is no longer

inclined to say that he has before him two copies of one report; he has before him two reports of one case. He does not at once decide that the one was not derived from the other; but he is forced to believe that, if that be so, there has been something that cannot be called copying, but should be called rewriting or paraphrasing. No text with variants will adequately represent the facts: he must transcribe both texts. And then intermediately he finds instances in which he hesitates long over the question whether he has two reports of one case or two copies, more or less freely made, of one report.

A good example of two reports is given by what is in all our available manuscripts the first case of the third year.[1] Nine books give us substantially the same report, and they all begin with a blunder. The record shows that the plaintiff was Ingelram Berenger and that the defendant was Master Richard de Barton. In our manuscripts the plaintiff has become Master Richard de Hyngeram, Hyngham, Bingham, Wingham or the like, but always 'Master Richard.' To all seeming this 'Master Richard' came from the defendant's name, while 'Berenger' disappeared, and 'Ingelram' degenerated through Hingeram to Hingham and worse. Such is at this point the relation between the nine books that we should be justified in saying that they all descended from one book which was guilty of the error that we have here described. There remains a tenth MS., our *B*, and the version that it affords of this case differs widely from that given by its fellows. Two accounts of one legal debate, however independent they may be, ought to agree about the outline of the discussion, and in the present instance we may say that approximately the same arguments are advanced in the two reports. Still, if our readers will carefully compare the two, they will hold that if the one is in any sense the origin of the other, someone has taken upon himself a function very different from that of a mere copyist: he has treated his material in the freest manner and rewritten the story from first to last. In order that members of the Society may see at their ease the relation between the two reports and may be able to check the editor's inferences, we will give the English of the two in parallel columns, premising that this specimen has been selected as fairly typical. What the record tells us is in brief this:—Ingelram Berenger brought an action of covenant against Master Richard of Barton, and counted that a covenant was made between them, to wit, that the defendant demised certain tenements to the plaintiff for eight

[1] *Berenger* v. *Barton*, vol. ii. p. 84.

years; and that the plaintiff was seised until he was ejected by the King's escheator by reason of the minority of Henry, son and heir of Henry Sturmy, who held of the King in chief; and that the defendant was requested by the plaintiff to observe the covenant, but refused and still refuses. Then *profert* is made of an indenture witnessing the demise and containing a clause of warranty. Thereupon the defendant pleads *Non est factum*, and issue is joined. And now we must turn to the reports, which tell of the argument that took place before the defendant denied the authenticity of the deed.

Report I.

Master Richard of Hingham [or the like] brought his writ of covenant against Richard of Barton [or the like] and counted that wrongfully he does not keep covenant with him concerning [certain tenements]; and he says that Richard leased to him the said tenements for a term of eight years and bound himself and his heirs to warrant, acquit and defend the same to [the plaintiff] against all men until the said term should be fully accomplished; and that by this lease [the plaintiff] was seised until the King's escheator ousted him by reason of the nonage of the son and heir of Henry Sturmy, who held of the King in chief; and that since the ejectment [the plaintiff] has often come to [the defendant] and has prayed him to hold covenant etc.

Toudeby defended and said: Sir, he counts that the King's escheator has ejected him from his term; and, since they have assigned no tort in our person, we demand judgment whether we ought to answer to such a declaration.

Bereford, C.J. It behoves you to assign in your count a certain cause other than saying that the escheator ejected you; for, supposing that the escheator ejected you

Report II.

One A. brought a writ of covenant against Master Richard of Barton, and counted that wrongfully he holds not a covenant between them concerning a house and a carucate of land with the appurtenances in A: and wrongfully for this reason; whereas Richard leased to A. this land for a term of ten years, by which lease he was seised for the term of two years until the King's escheator entered by reason of the nonage of one H. etc. and seized the land into the King's hand, A. has often come to the said Richard and has prayed him etc., but he would not; and thus has he gone against covenant etc.

Toudeby. He has counted against us for damages, and he has not counted that we have broken covenant. Judgment of the count.

Stanton, J. He says that [the defendant] leased to him, and that by his lease he was seised until the escheator etc., and that since that time he has often come and prayed him to keep covenant, and that he would not do it; and that is the point at which begins the tort that he affirms in your person. Wherefore etc.

Westcote. My father leases land for a term of years and binds him-

without reasonable cause, then [your] recovery would properly be against him, and not against [your] lessor. Moreover, what estate had he?

Herle. Sir, we tell you that Henry Sturmy was seised of these tenements; and that he held them of the King in chief; and that he leased the house etc. to [the defendant] for a term of eight years; and that [the defendant] leased to us his term by his deed; and that after the death of Henry Sturmy, the escheator entered by reason of the nonage of his son and heir. And since we produce the deed of [the defendant] our lessor, which comprises the lease and [shows] that he ought to warrant and defend us, we demand judgment whether he ought not to answer to this, as the ejectment done to us by the escheator is not due to any default of ours or to any trespass found in our person. Moreover, we can plead no estate other than our own estate; for it may be that [the defendant] our lessor had originally only a term, and that afterwards H. Sturmy released and quitclaimed to him in his seisin, so that thereby his estate was enlarged. And, whether he has fee or term, it behoves him to answer to our count. Judgment etc.

Friskeney. Whatever he says is of an ejectment done by one who is a total stranger to us, and whose act cannot with reason be punished in our person. Wherefore etc.

Westcote. We say that you yourself leased the house etc. and by your deed bound yourself to warrant and defend. That you have not done, and so we do affirm a tort in your person, namely a breach of covenant. Besides, you will have your recovery against Henry Sturmy's self [to warranty] and dies; the chief lord comes and ousts the termor because of my nonage; I say that when I am of age the termor shall have his recovery against me. So in this case.

Stanton, J. I disseise Henry Scrope [my brother justice] and then let the land to you for a term. Henry comes and brings the assize and recovers. I die. Shall you not have your recovery against my heir? And yet he [the heir] has done you no tort. So here.

Toudeby. He has not said that the land was our right and our heritage. If he will say that, we will plead on that point.

Herle. There is no need to say that; for, no matter how you came to the land, were it by right, were it by wrong, since you have leased it to us by your deed and we (as we have said) are ousted and have no other way etc., except this writ, we pray judgment.

Toudeby. You have not affirmed any cause of damage in our person. (*Ut supra.*)

Herle. Under the old law before the writ 'occasione talis vendicionis' I should have had my recovery against my lessor, no matter who ousted me. And since we are excluded from the writ 'occasione etc.,' because he [the lessor] has not alienated, and since you cannot assign any tort in our person by way of showing that the land is recovered by our default, and since you are bound to warrant against all men, we pray judgment whether you ought not to answer.

Toudeby. Am I to hold the covenant against all folk who may oust you, where a recovery against them is saved to you by the law and

heir when he is of full age on account of the same ejectment, and yet he has done you no wrong. So it would be a great hardship if we had no recovery against you. We demand judgment etc.

Scrope, J. [or Bereford, C.J.] If he [the plaintiff] had been ejected by some common person against whom he could have had an action, it would be no wonder if [the defendant] were not bound to answer. But here the escheator has only done what pertains to his office, for a term does not override a right of wardship (*qar terme ne toud mye garde*). So his [the plaintiff's] action is given against you [the defendant].

Herle to the same effect: Under the old law I should have no recovery against anyone but my lessor, no matter by whom I were ejected; and because there was hardship in the case where the lessor had nothing, remedy is granted against my ejector by the writ 'occasione cuius vendicionis etc.' [that is, *quare eiecit infra terminum*]. But here we are in a case in which we can have no action against any but you; so we demand judgment whether, since we produce your deed, you ought not to answer to this.

Toudeby was driven by the Court to plead over.

Toudeby. Not our deed. Ready etc.

Issue joined.

where you can assign no tort in our person?

Herle. The writ says that you are summoned to answer, not for a tort, but for covenant broken, and to that you make no answer. Judgment against you as undefended.

Toudeby. And we pray judgment as before. You have admitted that you were seised by our lease, and so the covenant was performed so far as in us lies. Judgment, whether you can demand anything against us.

Bereford, C.J. I see no cause why you should recover damages against him.

Herle. The tenements were at one time in the seisin of one Henry Sturmy, who leased them to Master Richard for the term of ten years, and the King's escheator seized the tenements into the King's hand by reason of the nonage of the son and heir of Henry Sturmy, who held of the King in chief. So we have no action against anyone except our lessor.

Toudeby. Why did you not count that H. Sturmy leased to us and we to you?

Herle. There was no need to take title from one who could give us no advantage. We claim, not through him, but through Richard our lessor, and if we cannot recover by this writ, we are debarred from action.

Toudeby. What have you to show the lease?

The others put forward a deed which witnessed it.

Toudeby. Not his deed. Ready etc.

Issue joined.

What judgment will the reader deliver as to the relation between these two texts? Neither can be called a copy of the other: not even

a 'free copy.' Nor, again, is it easy to imagine a report from which both have been obtained by a process of partial transcription. When we closely look into them, we may say that in a general fashion they support each other, and that when they are taken together they present an intelligible and lifelike account of an instructive dispute; but we cannot say that they are minutely consistent. Observe, for example, how in both reports the chief justice shows a certain leaning towards the defendant's side. In both reports he seems to say that he must have more facts, and therefore in both reports Herle, who is of counsel for the plaintiff, gives an explanation of the relationship between the defendant and the Henry Sturmy who had been mentioned in the count; he explains that Sturmy demised to the defendant for a term of years—a fact which, so we may remark, does not appear upon the record. Bereford wants, so it seems, to be satisfied that the plaintiff has no action against the escheator, and therefore to be satisfied that the escheator was doing his duty. But whereas this remark of his and Herle's consequent explanation come at a fairly early point in the first report, they come to us somewhat as a surprise near the end of the second report and after the defendant's counsel has been for some time fighting what looks like a losing battle. That, we take it, is the sort of difference which may be expected, and indeed ought to be expected, between reports if they are really independent. If medieval discussions were at all like modern discussions, we may safely assume that there was much repetition. A report which we read in five or ten minutes may well represent a debate which lasted for a couple of hours, and in the course of which the disputants came back once and again to their old arguments. Two independent attempts to extract in the form of a short dialogue the pith of such a discussion will give us texts which, if they be regarded as mere assemblages of words, will be markedly dissimilar, and in particular it is likely that the little bits of argument will occur in more than one sequence.

Parenthetically we may observe that, whether they be independent or not, we seem to be fortunate in obtaining these two reports of this one case. If we discard either, we are losers. For example, the second gives us no equivalent for the words in which the *ratio decidendi* — for this we might call it — is stated by Scrope. 'Si un homme du people luy eust engetté, vers qi il porreit avoir actioun, il ne serreit mye merveille mesqe vous ne serriez tenuz a respoundre; mès ore ad l'eschetour fait ceo qe appent a soun office, qar terme ne toud mye garde. Par quei soun recoverir est doné vers vous.' On the other hand, the second report gives us a remark of

Stanton's which we would not willingly sacrifice. 'Jeo disseisis H. Scrope, et puis lesse cele terre a vous a terme. Vient H. et porte l'assise et recovere. Jeo devie. N'averetz vous pas vostre recoverer vers mon heir (*quasi diceret sic*)? Et issi n'ad il nul tort fait. Auxint par de cea.' Then again in Herle's first speech as it stands in the first report we see a passage that is not at once intelligible, or rather a passage that seems causeless:—'Moreover, we can plead no estate other than our own estate; for it may be that our lessor had originally only a term, and that afterwards H. Sturmy released and quitclaimed to him in his seisin, so that thereby his estate was enlarged.' Why, we may ask, should Herle 'plead any other estate than his own'? The answer comes to the surface in the second report. Toudeby has urged that the plaintiff ought to tell how the defendant had a certain estate and demised to the plaintiff:—'He has not said that the land was our right and our heritage. If he will say that, we will plead on that point.' It is in answer to some such challenge as this that Herle in the first report declines to plead any other estate than his own, and he proceeds to illustrate the danger that he would incur by so doing. Finally, if we are interested in the history of an important pair of terms, 'contract' and 'tort,' we shall be glad of a sentence of Westcote's which is found in the first version, and of a sentence of Herle's, which is found in the second. You object, says Westcote, that we have not affirmed any tort in your person; but we do affirm a tort in your person, as of (*come de*) a covenant not holden. The writ, says Herle, states that you are to be summoned to answer, not for any tort, but for covenant broken (*de nul tort mès de covenaunt enfreint*). Any attempt to fuse these two reports together, though it might save some space and labour, would run a great risk of spoiling both. Good or bad, a law report, unless it be a full transcript of a shorthand-writer's notes, is a work of art. It is a whole, and an editor must take it or leave it. But we must return to the manuscripts.

In the instance that has just been before us the contrast was between *B* on the one hand and the other manuscripts on the other. Is this relationship going to be maintained? we ask. Not so, is the answer. In the very next case *B* has fallen into line with its fellows. The version that it gives has a different beginning from that which is commonly found. On the one hand, we have 'In a replevin a man made the avowry upon a stranger'; on the other hand we have 'In a plea of taking of beasts the avowry was made upon another than the plaintiff (*sur aultre qe sur celuy qe se pleynt*)'; but the two

phrases mean precisely the same thing, and, for the rest, the various texts that we have of this case stand well within what we may call the limits of collatability. And so in many other cases. Taken as a whole, *B* is not independent of the other manuscripts: that is very certain. No one of these ten books is absolutely independent of any other of them. In other words, if we take any pair of them, both will contain some matter which descends from a common original. But then, as we go on, we see this united regiment of manuscripts breaking up into little companies, which remain apart for a while, only to fall into line once more. If we effect the rudimentary simplification mentioned above—that is to say, if we treat *ADQ* and *MP* and *ST* as units—then a great many different combinations occur. We may find *ADQ* giving one report, while a second is given by *MP* and *ST*. We may find *ADQ* and *MP* giving one report, while a second is given by *ST*. We may find *ADQ* and *ST* giving one report, while a second is given by *MP*. Any one or any two of the three groups may give no report at all. Then each of the three outstanding books has features that are all its own. Thus *R*, though it gives but few cases and shows some tendency to ally itself with *ST*, contributes some reports, or some versions of reports, which seem to us singularly good. When *B*, the Maynard manuscript, was made the basis of the printed edition, fortune had put into the hands of the publishers a curiously lonely book. Both as regards the cases chosen and the reports given of the chosen cases, *B* is often solitary, its nearest of kin being *L*, though the kinship is not of the closest. This *L* also gives some cases which we find in no other book, though the total number of cases that it gives is not very large. And once more we must say that we are speaking only of the third year. Past experience has not encouraged us to hope that if as regards one year we can establish a scheme of relationship, that scheme will be maintainable in other years.

Another significant fact is that occasionally one manuscript gives two reports of the same case. This happens in *A* and in *P* and in *T*. These three books are not close allies, and the cases that are doubly reported in any one of them are not those that are doubly reported in any other. In this way in the second year *A* diverges from its close companion *D*. Then in *P* note is taken of the fact that the same case occurs twice, and that one report is better than the other. In the third year *S* and *T* long behave as sister manuscripts should, and then at a definable point they diverge, and of some of the cases that *T* proceeds to give it has already given other reports.

Last year we called attention to the manner in which *P* takes up some cases of Edward I.'s time and thrusts them at various points into the second year of Edward II. Its next of kin is *M*, which does nothing of the sort. And then we observe that between the second year and the third *P* introduces a batch of cases which, as the names of justices and counsel show, are of earlier date; and that while *S* is still maintaining 'Trinitat. anno tercio' as a headline, it sweeps in a few cases that belong to a decidedly later time. We are tempted to say that whereas an investigator of manuscript literature can generally assume that every codex has only one parent, the ordinary laws of procreation hold good among these legal volumes, and that each of them has had two parents—two if not more. We could not explain this intricacy, were it not that we have before us the work of men who live in close fellowship with each other.

Any reasonable theory about the parentage of our manuscripts would have, so it seems to us, to introduce by way of hypothesis a considerable number of books that are not now forthcoming. Perhaps we might even be compelled to suppose that half the once extant volumes have perished, and such an inference might not be extravagant, for, as already observed, we are dealing with a class of books which do not make their homes in the libraries of religious houses and whose owners are no undying corporations. Some of our manuscripts have suffered rough usage; some of them are acephalous, and that is the reason why we can bring more to bear on the third year of the reign than on the first. Someday a very interesting treatise may be written on 'Year Book Manuscripts, Edward I.–Henry VIII.' For the present it is to be feared that we must live from hand to mouth.

As yet, however, we have but inadequately described the difficulties by which our pathway is beset. We are very unwilling to print in this place what is to be printed in the body of this book. On the other hand, we are desirous that members of the Society should see for themselves in as convenient a form as possible a specimen of the problems that have to be solved if we are to understand the character of the books which have come to our hands. Therefore just for once we will take a case—the case of *Rasen* v. *Furnival*[1]—of which we have no less than four reports, and will here print translations of them, together with some little commentary which will draw attention to the points at which they diverge from each other. Of the four texts I. is given us by *Y*, the 'topically' arranged manu-

[1] See below, p. 140.

script; II. is given us by *B* and *L*, but *L* carries the case further than *B*; III. is given by *S* and *T*; IV. only by *R*. In passing we notice that the case does not appear at all in some of those books that give large supplies of cases; we do not see it in *ADQ*, and we do not see it in *MP*. Next we may premise that two points of legal interest emerged in the course of the discussion; for brevity, we will call them the First Question and the Second. The First appears to be this:— In an action of formedon when the descent of the estate tail is being stated, is it necessary or proper to name a person who did not inherit, but who would have inherited had he outlived an ancestor: in other words, a person 'who did not live to attain an estate'? In a writ of right, so we understand, this had to be done: thus a daughter who claimed to succeed to her father would have to mention a son, her brother, who died in the father's lifetime; but in some of the lower actions this was not so.[1] The Second Question, if stated in modern terms, seems to have been this:—A tenant in tail becomes entitled by inheritance to the reversion in fee simple which is immediately expectant on the estate tail—is there a merger of the estate tail? Of 'merger,' indeed, we shall not read; we shall read rather of purification—is the estate tail *enpury*, *enpuré*[2] made a pure fee, by the descent of the reversion? Such were the questions of law that were debated; but we must ask our readers to inquire somewhat carefully how far each of these questions is clearly raised by each of the four reports. They will not forget that according to the law of a later day there can be no merger of an estate tail.[3] We ought also to direct our attention to the appearance of any proper names, and we see that I. professes to know what no other report knows—namely, that the Jordan who was the donor in tail was Jordan Denkeley; and that II. professes to know what no other report knows—namely, that the tenant in the action was T. de Furnival; and that IV. professes to know what no other report knows—namely, that the Michael who was a donee in tail was Michael de Manorez. Incidentally we will mention, though for a while we are going to leave the record out of sight, that the tenant in the action really was T. de Furnival, that 'de Manorez' is not a very incorrect version of Michael's true surname, but that Jordan's sur-

[1] See the decision in *Attecrouch* v. *Frost*, below, p. 159.

[2] In the French of France the verb was *appurer* or *apurer*. It seems to live now chiefly in the phrase *comptes apurés*, meaning accounts that have been audited and so purified. The English confusion of the two prefixes might be amply illustrated. We have lately seen *enverer* for *averer*, and *afant* for *enfant*.

[3] See *Wiscot's Case*, 2 Rep. 61.

name appears on the roll as 'de Tretton,' so that for 'Denkeley' we cannot account. Then it will be observed that in I. and III. no judge speaks; that in II. Bereford speaks once; and that in IV. a single speech is ascribed to 'H. Scrope,' care being taken (and this is not very common) to distinguish the justice Henry from his brother Geoffrey, who was still at the bar. Lastly, let us extract the names of the counsel for the two parties. In I. Friskeney is for the demandant and Passeley and Herle are for the tenant. In II. Denom and Passeley are for the demandant, and Herle, Malberthorpe, and Toudeby are for the tenant. In III. Denom is for the demandant and Herle is for the tenant. In IV. Friskeney and Toudeby are for the demandant and Herle and Miggeley are for the tenant. That there has been some blundering seems already pretty plain, for Passeley and Toudeby cannot have been on both sides; but blundering over the names of counsel is from our present point of view a superficial matter. Let us now scrutinise the four reports one by one.

Report I.

One Alianora brought her writ of formedon against B. and said that wrongfully he deforces her of a messuage and carucate of land with the appurtenances in C., whereof one Jordan Denkeley was seised as of fee and of right, and out of his seisin gave the tenements to Michael and Alice his wife and the heirs of their bodies issuing; by which gift Michael and Alice were seised in their demesne as of fee and of right by the form [of the gift] aforesaid, in time of peace etc., by taking esplees by the form [of the gift] aforesaid; and from them it descended etc. to John, as son and heir, by the form [aforesaid]; and from John since he died etc. to Alianora as sister and heir. If he will deny etc.

Passeley defended and said: Action by this writ she cannot have; for the writ says 'which after the death of the said Michael and Alice and John their son [ought to] descend to the said Alianora as sister and heir by the form etc.'; and we tell you that this John from whom she takes title by writ and mouth never attained an estate and never was seised of the tenements. Judgment. If she will deny, we are ready to aver.

As to this many wondered, for this is a droiturel as well as a possessory writ, and in a writ of right one must search for every drop of blood in order to make a good descent; and in a possessory

writ, if one makes mention of a person who never attained an estate, this will not cause an abatement of writ or count. But I believe that [Passeley objected] because the writ in saying 'and which after the death of Michael and Alice and John their son' seemed to take title from the brother equally with the father and mother etc.

On another day the parties came and *Herle* said: Although they say that Jordan gave these tenements to Michael and Alice his wife and the heirs of their bodies—which we do not admit—we tell you that this Alice was daughter and heir of Jordan and survived Michael her husband, and then married one Gervase. They held the tenements as fee simple and engendered a son Richard by name. Gervase survived Alice and held by the curtesy for the whole of his life. On his death Richard entered as son and heir of Alice and alienated before the Statute. We demand judgment whether Alianora can have an action for the tenements by the 'tailed form.'

Friskeney. First confess the 'tail,' and let us abide judgment.

Herle. We have no need to confess or deny it, for we say that Alice was daughter and heir of Jordan; ready to aver it.

Friskeney. We tell you that Jordan gave the tenements to Michael and Alice and the heirs [of their bodies]; and that Michael of this Alice engendered one John and Alianora, the demandant; and that John survived Michael and Alice; and that by his death action accrued to [the demandant] by the form [of the gift] aforesaid. And we demand judgment etc. If they will deny, ready we are etc.

Here, in the first place, we have a fuller statement of the writ and count than we shall find elsewhere. The demandant's case is that a certain Jordan gave the land to Michael and Alice his wife and the heirs of their bodies issuing; that they had a son John and a daughter, the demandant; that John died without issue; and that the demandant is entitled as heir in tail by the form of the gift. Then Passeley, who is of counsel for the tenant, objects that John never lived to attain an estate, and that therefore the demandant should not trace descent through him. No counsel speaks for the demandant, and nothing falls from any judge; but the reporter—and this passage is peculiar to this report—tells us that Passeley's objection excited some surprise, and for that surprise he gives a reason into which we need not go, though he

thus defines the First Question with a sharpness that we shall not find in other books. We notice also that no one has proposed to aver on behalf of the demandant that John did live to attain an estate. Then on another day Herle, who, like Passeley, is for the tenant, takes a new point and raises our Second Question. He says that Alice was daughter and heir of Jordan; that she outlived Michael, her husband, and married Gervase; that they had issue one Richard; that Alice died; that Gervase held as tenant by the curtesy; that on his death Richard entered as Alice's heir and alienated. Now if there was a gift in tail, we have here occasion for a question about merger: after the death of Jordan and Michael, Alice was tenant in tail with reversion to herself in fee simple. Still, though all the elements of the question are given, our attention is not expressly drawn to the fact that there has been a meeting of two estates in one person. Friskeney, who is for the demandant, dares Herle to confess the gift in tail. Herle will not do so, but proposes to aver that Alice was Jordan's heir general. Friskeney repeats that there was a gift in tail, adding that John survived his parents. And then the curtain falls. The question of merger has, we may suppose, been raised, but no judge has expressed any opinion about it, and so far as we can see the tenant's counsel are prepared to maintain their position. A small matter remains to be noticed. We are told that Richard, Alice's son by her second marriage, entered and alienated. We shall be told elsewhere that he alienated to the tenant in the action. But here it is said that the alienation was made 'before the Statute.' There can, we think, be little doubt that the reference is to *De donis*; but the point of the remark is not obvious, for it was no one's contention that Richard was tenant in tail. We suspect that those three words 'devant le statut' were not well weighed. And now we turn to another report.

Report II.

One Annora brought a writ of formedon in the descender against T. de Furnival and demanded certain tenements which one Jordan gave to Michael and Alice and the heirs of their two bodies begotten, and which after the death of Michael and Alice and John should descend to the demandant as sister and heir by the form of the gift.

Herle. You have counted through one John, and we will aver that there was never any John son of Michael and Alice who lived to attain an estate. Ready etc.

Denom. That negative of yours might be true in two ways: either because there never was such a person, or because there was such a person but he did not attain an estate. To this uncertain answer you cannot be received.

Herle. Take it which way you please, your writ is bad, for if there was such a person and he did not attain an estate, [still] your writ is false.

Denom. There was one John, brother of Annora, who attained an estate. Ready etc.

Herle. Action you cannot have, for after Jordan's death Alice was seised as heir of Jordan in fee simple, so that she could have alienated. Judgment, whether you can demand anything by the form of the gift.

Denom. We will aver that the tenements were given to Michael and Alice [in fee tail,] and we are daughter and heir by the form of the gift. What say you to the form?

Malberthorpe. We need not answer, for we tell you that Alice outlived Jordan, the donor, and was heir of blood, so that after his death she had fee simple and could have alienated. Judgment.

Passeley. We demand by the form of the gift limited to Michael and Alice as being [their] heir and not as Alice's heir general. And this form we offer to aver, and you do not answer; therefore judgment.

Herle. After the death of Alice, Richard[1] held by the curtesy all his life, for that it was Alice's inheritance. From this it appears that she had fee simple. Besides, if a stranger had abated after [that husband's] death, J. the son and heir of Alice, who alienated the tenements to us, would have recovered by the mortdancestor. Wherefore etc.

Denom. There are cases in which a man can recover by the mortdancestor and yet has no power to alienate.

Bereford, C.J. She says that she is the heir of Michael [and Alice] according to the form of the gift, and claims nothing as heir of Alice [*or* of Jordan]. So you are pleading at cross purposes.

{*Toudeby.* We say that Alice died seised in her demesne as of fee, and that after her death W. [our alienor] entered as her son.

[1] In this version the second husband is called Richard, and the son is called J. or W.

Denom. Answer whether Jordan gave in the manner supposed by our writ.

Toudeby. Jordan did not give, but Alice entered as daughter and heir. Ready etc.

Denom. Jordan did give in the form supposed by our writ. Ready etc.}

Let us notice some differences. One great difference is that the debate is carried further. But we must not omit to add that only one of the two books in which this report is found supplies the concluding passage which we have placed in braces. The tenant's counsel in the end, retreating from the question of merger, deny the gift in tail; and the issue is 'ne dona pas.' That by itself should tell us that II., or rather the longer form of II., is not taken from I. Incidentally, however, we get a good deal of argument in II. that we do not see in I., and notably some words are put into the mouth of the chief justice. On the other hand, if I. was obtained from II., or from any other of our reports, the last stage of the debate was omitted—an improbable supposition—and the interesting note about the surprise caused by Passeley's objection was interpolated. Also a different impression about the first half of the discussion is left upon our minds. In II. the tenant's counsel do not abandon their first point until the demandant's counsel have asserted and proposed to aver that John did attain an estate, while this is hardly what I. would have led us to believe. Then a passage peculiar to II. is the little skirmish between Denom and Herle over an ambiguity that Denom discovers in the statement that 'there never was any John son of Michael and Alice, who lived to attain an estate.' This, were we dealing with books of an ordinary kind, would entitle us to decide that II. is not derived from I. or III. or IV. We now turn to III.

Report III.

Annora brought a writ of formedon in the descender and said in her writ that one Jordan gave the tenements to Michael and Alice his wife and the heirs of their bodies begotten, and that the tenements after the death of Michael and Alice and John their son and heir ought to descend to the demandant as sister and heir of John according to the form of the gift.

Herle. This is a writ of formedon in the descender; and, whereas the writ makes the demandant sister and heir of John,

we say that John never attained an estate so that he could have an heir of these tenements except one begotten of his body. Judgment of the writ, for they might have had a good writ, saying 'and which after the death of Michael and Alice ought to descend to the demandant as daughter and heir of Michael and Alice.'

Denom. Whereas they say that John never attained an estate, we tell you that he survived Michael and Alice and so attained an estate. Judgment.

Herle. We tell you that Jordan had a daughter, Alice, who outlived her father, so that after his death the right of the reversion descended to this same Alice as daughter and heir; and she was seised in her demesne as of fee and died seised of that estate. And whereas [the demandant] could have had her recovery [if any] on the death of Alice by writ of mortdancestor at the common law, we pray judgment whether she is to be answered to this writ. And we also say that on the death of Alice one Richard entered as son and heir and alienated. Judgment.

Denom. We are not heir general of Alice, but are restricted by the tail to making ourselves heir of Michael and Alice in common, and not heir of Alice only. Judgment.

And they were adjourned, since she claimed as heir restricted by the tail made to her father and mother.

Herle. You cannot have action, for the fee was purified (*enpurye*) in the person of Alice, and Richard was her heir and entered and alienated.

Afterwards, in the quindene of Michaelmas, *Herle* said: We tell you, Sir, that Jordan died seised; and that on his death Alice entered as daughter and heir without her husband and her having anything by the tail. (And this he said because he dared not abide judgment: so to the country.)

There are resemblances between II. and III.; but there are differences also. Thus III. makes no mention of the second husband and his tenancy by the curtesy. Indeed, if III. stood alone, we should have to think a while before we perceived that the story must in all likelihood have involved a second marriage. On the other hand, in III. we obtain for the first time language which quite clearly tells us that what we call a merger is the debated point. 'We tell you that Jordan had a daughter, Alice, who outlived her father, so that after

his death *the right of the reversion* descended to her as daughter and heir . . . The fee was purified in the person of Alice.' In I. and II. there is no mention of any 'reversion,' and we can only say that, given the facts contributed by the one party and those contributed by the other, a reversion did descend upon a tenant in tail. Also we are glad to be told in so many words that Herle dared not abide judgment on the Second Question, though we might have guessed this from II. and IV. We pass to our last report.

Report IV.

One Annora brought her writ of formedon and said that one Jordan gave the tenements to Michael de Manorez and Alice his wife in fee tail, and that [the demandant] was issue of the said Michael and Alice.

Herle. Action to demand these tenements she cannot have; for they were in the seisin of one Jordan, and the said Alice was daughter and heir of the said Jordan and outlived him, and after his death held these tenements as his heir and died seised. After her death one Richard entered as son and heir and enfeoffed us. We pray judgment whether you can have action.

Friskeney. First admit the form [of the gift] as we stated it, and then let us abide judgment.

Herle. To admit it we have no need; for Alice was daughter and heir of Jordan, and so whatever was in Jordan's person descended to her as heir; and after her death her second husband G. held the tenements by the curtesy, by reason that he had issue, namely, this same Richard; and on the death of G., Richard entered as son and heir, and so the tenements were purified (*enpurés*) in the person of Richard. We pray judgment.

Miggeley. Let us suppose that a stranger had entered after the death of G. the tenant by the curtesy, Richard would have recovered by the mortdancestor, and therefore he would have recovered as of fee simple; and it would have been impossible for [the demandant] to recover [from Richard] by formedon if she could not show a later 'tail.'

H. Scrope, J. He says that the whole right which was in Jordan descended to Alice as daughter and heir, and that [she] died seised, and that on [her] death Richard entered as son and heir. This is equivalent to saying that on Jordan's death Alice entered as into her inheritance.

Toudeby. We tell you that Alice held by the form [of the gift], and that after her death Richard entered and alienated. We pray judgment.

Herle. Whereas they suppose that Jordan gave as stated above, he did not give but died seised, and after his death Alice entered as into her heritage. Ready etc.

The specific difference of this last report is that it gets rid of the First Question altogether by suppressing John and all that concerns him. Let us note somewhat carefully what is done. The facts are simplified. Anyone looking at the brief preliminary statement would infer that the demandant inherited directly from her father and mother, whereas, as we have seen, she had to make herself heir 'according to the form of the gift' to her brother. This we take to be a legitimate proceeding. This report is not going to take any notice of the First Question, and in order that the Second Question may stand out clean and clear, the troublesome John is extruded. On the other hand, we see that the second husband and his tenure by the curtesy are retained, and thence we should infer that IV. was not made from III. Also we may be inclined to say that, as regards the Second Question, IV. is in some respects our best report. We are given the facts that raise that question, and then there is the talk of 'purification.' Then, however, laying IV. by the side of II., our eye is caught by a curious likeness. In II. Toudeby is made to say 'Nous diom qe A. [= Alice] devia seisi de ceuz tenemenz en son demene com de fee, après qi mort W. [= Richard] entra com fitz.' In IV. Toudeby is made to say 'Nous vous dioms qe Alice tynt par la forme, après qy mort Richard entra et aliena.' Now in II. Toudeby is for the tenant, while in IV. he is for the demandant. In II. he is asserting that Alice was tenant in fee simple; in IV. he is asserting that she held *per formam doni*—that is, as tenant in tail. And yet the two speeches are so much alike that they make us uncomfortable. One other comparison we must make, and this between the two extremes of our series, I. and IV. Extremes they are, for the First Question, which is prominent in I., has been rooted out of IV., and the place in which it grew has been, so to speak, smoothed over. And yet the two agree, as against II. and III., in the introduction of Friskeney, and the agreement goes further. In I. we read :—'*Frisq.* Conissez la taille primes, e seoms en jugement.—*Herle.* Nous n'avom mestier a conustre ne a dedire, qar nous dioms qe Alice fu fille heir Jordan Denkeley.' In IV. we

read:—'*Fris.* Grantez primes la fourme tiele com nous avoms dit, et pus demorroms en jugement.—*Herle.* A granter la forme n'avoms mestier, qe Alice fut fille et heir Jordan . . .' Lastly, IV. is the only report that introduces Scrope, J., and we could wish that what he is made to say were a little more explicit.

If now we turn for a while from our four reports to the parallel record, we shall indeed obtain some valuable information, but not, so it seems to us, any that will decide the question whether our reports are independent of each other. We shall find an action of formedon in the descender brought by one Robert de Rasen and Annora his wife, and we shall observe in passing that all four of our reports concur in suppressing Annora's husband. As, however, the questions of law that were raised in the case would be precisely the same whether the action was brought by a feme sole or by husband and wife, this small feat of simplification, which gets rid of a legally unnecessary person, is hardly enough to arouse the suspicion that our four reports are less independent than at first sight they appear. Then we learn that the writ spoke of a gift made by Jordan to Michael and Alice his wife and the heirs of their bodies, and that the writ said that after the death of Michael and Alice and of John, son and heir of Michael and Alice, the tenements ought to descend to Annora as sister and heir of John. There follows a statement of the count, which alleges a descent to John and from John to Annora as sister and heir. Then, as we might expect if we have read the four reports and have some acquaintance with the relation that reports bear to records, we see no indication of any debate concerning the mention of John, and we see no suggestion of merger or of that second marriage and the birth of a son which made the question of merger important. What we see is a 'special traverse.' The tenant says that Jordan died seised in his demesne as of fee and that Alice entered as his daughter and heir, *absque hoc* that Michael and Alice ever had anything by the gift of Jordan as the demandants say. Upon this traverse issue is joined. Looking back now at the last three of our reports—the first of them stops too soon—we may say that this special traverse is not badly represented by II. and IV. and is very well represented by III. But on the whole we do not in this instance gain from the record much new material that could be brought to bear on the problem that we are discussing. Even without looking at the roll we should probably have held that the silence of IV. in the matter of the demandant's brother John threw no doubt upon what is said about him in the other three reports; but the roll

makes it abundantly clear that IV., taking no interest in the First Question, has eliminated John in the interest of simplicity.

We cannot afford the space that would be requisite were we elaborately to dissect another instance of four concurrent reports. Rather we will ask any reader who has followed us thus far to perform that operation for himself upon the case of *Bygot* v. *Belet*.[1] Very briefly we will state in outline what he will find. It is a writ of entry *sur cui in vita* in the *per* and *cui*. In other words, one C. sues X., saying in effect: 'My mother's husband, A., and my mother, B., were seised in my mother's right; A. during the coverture alienated to M., who alienated to you; A. and B. are dead; I am B.'s heir.' To this X. pleads an exchange: 'M., whose assign I am, gave other land in exchange; A. and B. were seised of it; after A.'s death, B., agreeing to the exchange, was seised of it; you are seised of it now.' Upon this C. replies that he was not seised after B.'s death; and then issue is joined. This is what we learn from the record, and the record in no wise suggests that X. had any specialty to show for the exchange or for the assignment made to him by M. Now it is evident from the four reports taken together that, if the facts alleged by X. were true, an interesting question of law arose.[2] Could X., who was no party to the exchange, plead it so as to bar C.? Could he plead it if he had no specialty? It seems to have been the opinion of the judges that X.'s proper course was to vouch M., and we may gather that X. did not want to do this, since M. was not a man of substance. At one moment X.'s counsel seem to have been persuaded that they must vouch. Ultimately, however, they held to their plea of an exchange: a plea in confession and avoidance; and thereupon the demandant traversed the allegation that he had been seised since his mother's death of the lands given in exchange for those that A. had alienated. Two of our four reports, however, make the case end with a voucher; X. vouches M., and the voucher stands. But further, one of these two reports—and it happens to be the only one that has yet been published[3]—ends with the following statement of law: 'So note that no one can be received to allege an exchange, except the person with whom it is made or his heir (who is privy in blood), or one who has a specialty showing that he is assign of the party to the exchange and also a specialty showing the exchange.' Now, as the tenant succeeded in placing upon the roll a plea of the

[1] See below, p. 128.
[2] See the similar case of *De Lisle* v. *Hanred* in our vol. i. p. 142.
[3] Old edition, p. 70.

exchange, which plea did not allege a specialty either for the exchange or for the assignment, and as the demandant, instead of demurring, traversed this plea, we are compelled to say with all proper humility that this reporter, so far from giving us the true moral of the case, has given the very opposite thereof, and that what he ought to have said was: '*Semble* that an assign may plead an exchange without showing a specialty either for the exchange or for the assignment.'[1] In this instance we may be inclined to hold that the two reports which end with a voucher descend from lawyers who did not hear the end of the debate, and one of the other reports tells us expressly that the whole debate did not take place on a single day. But now, having noted the main discrepancy—a discrepancy of the first magnitude we must ask our readers to examine these four reports in detail, and we think that the verdict will be that if any one of them has been obtained from any other of them, this has been effected by a process for which 'transcription' is not the proper name.

For our own part, we are at present inclining to the belief that in such instances as *Rasen* v. *Furnival* and *Bygot* v. *Belet* and a few others, we really have before us no less than four aboriginally independent reports; but we are diffident and are desirous of explaining the cause of our hesitation. It does not seem to us in any degree improbable that in the year 1310 four apprentices at law were taking notes in court. Nor does it seem to us in any high degree improbable that the work of all four of them is lying before us in the year 1905. In the matter of law reports England is a wonderful place; all the wealth of foreign countries would be poverty here. No, what perplexes us is the strange alternation of harmony and discord. Our eleven manuscripts may give us the same report of a case. Then, as in *Berenger* v. *Barton*, nine may give us one report and the tenth another. Then, as in *Rasen* v. *Furnival* and *Bygot* v. *Belet*, five (*ADQ*, *MP*) may be silent, while *R* gives one report, *S* and *T* a second, *B* and *L* a third, and *Y* a fourth. We are far from saying that this is fatal to the supposition that upon occasion we have in our hands four reports made by four different men who at one and the same time sat in court and noted what they heard. Only the amount of agreement that there is among all the manuscripts makes us suspicious when we see occasional divergence, and (if the writer of these lines may still use the plural voice) we feel that any argument

[1] Apparently the tenant had a specialty for the assignment, and produced it in court when it seemed likely that he would have to vouch his assignor, but he makes no mention of it in his enrolled plea.

of ours as to what is probable involves one indeterminate and perhaps indeterminable quantity, namely, the amount of liberty to improve a text that a medieval collector of cases might assume. As time goes on we or our successors may be able to speak more positively. At present our observations have been too few to enable us to describe with any exactitude the circumference of this liberty of improvement; but a few remarks about it may fairly be demanded from us.

First, however, while the cases of *Berenger* v. *Barton* and *Rasen* v. *Furnival* are fresh in our minds, we may turn from historical speculation to a question of practical importance. What is an editor to do when he comes upon two, three, or four reports of a single case? Will some grave charge of wasting money, time, and space be brought against us? 'The case of *Rasen* v. *Furnival*,' it may be said, 'fills some four-and-twenty lines of print in the old edition, and you are giving us what is nine or ten times as long. You are giving us four different reports; you are translating the four and adding a note from the record. The consequence is that, while the first three years of the reign consume but eighty-two pages, folio pages, in the old book, you have not got to the end of those three years in the course of your three volumes. Edward II. reigned for twenty years, and a simple sum in arithmetic seems to show that the reports of his reign will fill twenty volumes at the very least—at the very least, for there are reports of eyres that are wholly unrepresented in the old book.' Well, so it is, and as to the policy of carrying through this work to the end, the editor must unreservedly submit himself to the wishes of the Society. He, or whoever fills his place, will readily understand that some years hence the Society may decide that of Year Books it has had enough. But if and so long as the publication of Year Books is continued, we do not see how our procedure—which in the main is that which we learnt from Mr. Pike, an excellent master—can be materially changed. No one, we think, would sacrifice the note from the record; indeed we shall hereafter show reason for believing that a report that has not been compared with the parallel record is often treacherous ground. Then a free English version of the brief and elliptical French sentences is not very much longer than the notes which would be necessary if there were no translation, for an editor would fall short in his duty if he made no attempt to clear up ambiguities and the like. A suppression of the French text will hardly be suggested. It would save but an inappreciable part of an editor's time and labour, for he would still have to copy a French text

and to collate it; nor can we think that our power of understanding these debates is so assured that a reader could be advised to trust our translation without looking at the original. Then let it be had in mind that just about one half of the cases from the third year that we are publishing are absolutely new, since they are not represented at all in the Maynard manuscript. That we should neglect all other manuscripts is a proposal that will come from no one. However, in this digression touching our procedure we would speak chiefly of the course that is to be pursued when we have more than one report of a given case. Will the reader look once again at the four reports of *Rasen* v. *Furnival* or the four of *Bygot* v. *Belet* and tell us what we ought to have done? To us it appears that those four reports, whether aboriginally independent or not, could no more be represented by a single text with variants than the four gospels could be represented in that manner. A little paper, though scarcely any money, might be saved by giving three of the texts by way of footnote; but at present we should be sorry if we were charged with the task of assigning to any of the four any marked pre-eminence: each has its merits and each its defects. Wishful to make progress, we have on a few occasions—due notice being given—treated as substantially one report what we would rather have treated as two; but we cannot speak well of the outcome of our experiments, and do not propose to repeat them.[1] As to omitting a report merely because it seems to us bad, that, it need hardly be said, we cannot do. Some bad reports are, we take it, highly instructive, especially if they can be compared with better versions. And after all—to drop the apologetic tone—we may reasonably rejoice that of such cases as *Rasen* v. *Furnival* and *Bygot* v. *Belet* we have no less than four different accounts. Slowly as we read one after another a question of law takes shape in our minds, and by the time that we are finishing the fourth report we begin to understand what was to be said on the one side and on the other. By a comparison of varying versions the editor has learned so much that, to speak the honest truth, he never now feels easy about a case unless he can offer to his readers more than one statement of it. Some of the causes of this distrust will appear in the sequel.

And now we must observe that, even when we have only one report, we may expect to find many differences between the texts

[1] Occasionally we have been able to save some space by bringing three or four short reports of one case under a single heading. See e.g. *Haye* v. *Gynes*, below, p. 99, and *Copper* v. *Gederings*, p. 105.

that are on view in our various manuscripts. We will begin at the bottom of the scale, so to speak. Of spelling we said something on a former occasion;[1] but subsequent experience has taught us that the limits of permissible variation were even wider than we then thought them. Here we will remark in passing that some clerks have tricks of their own which really impede our comprehension of what they write, unless we are always on our guard. When we see *due* as a French word, we can hardly bring ourselves to construe it by 'of the'; but this is the form habitually used by the scribe of *S*, who has carried the abuse of the final *-e* to wondrous lengths. Even when John and Joan appear in company, they are both *Johane*. If *avere* may mean 'averred,' it may also mean 'to have'; and we see *usere*, *demorere*, and *moustrere* as infinitives. Another clerk, the writer of *B*, often makes us pause for a moment by his habit of giving *vous avietz* and *vous devietz* in the present indicative, though the corresponding first persons are *nous avoms* and *nous devoms*.[2] When in *S* we for the first time saw *noil*, and even *noille*, for *nul*, and *chescoyn* for *chescun*, and *fielle* and *feille* for *fille*, we thought that we saw slips of the pen; but this they were not; the clerk had his own scheme and adhered to it. However, our reason for once more mentioning the spelling of words is that in this quarter we seem to find evidence that the transcription of a text frequently involved the action of two persons, a dictator and a penman. By way of illustration we will carefully copy the beginning of a case from two closely related manuscripts, namely *S* and *T*.

Johane Romayne p*er*soun del Eglise de sent gregore de
Johan Romaigne p*er*sone del Eglise de seint Gregoire de

Eu*er*wyke p*or*ta bre*ue* de Jure de vt*rum* v*er*s Waut*er* de
Eu*er*wyk p*or*t*a* bre*f* de Jure de vt*rum* v*er*s Waut*er*

Wetewynd tresorere de la mesoune de seint p*er*e de Ebor*aco*
Betewynd tresorer de la meson de seint Piere de Ebor*aco*

et p*r*ia q*e* reconue fut si taunt de tenem*en*z seyent la
et p*r*ia qe reconu fut si taunt de tenem*en*z soit la

franch*e* almoygn de sa Eglise de seint gregore etc. ou
fraunch*e* aumoigne de sa Eglise de seint Gregoire ou

ley fee mesme cely Waut*er*.
ley fee mesme celui Waut*er*.

[1] See our Introduction to vol. i. p. xli. ff.

[2] He writes *chacie*, *gagie* (= *chacié*, *gagié*) instead of the usual *chacé*, *gagé*.

We should scarcely see so much difference were it not that a dictator has been at work, for if you are copying what you see, you will hardly change the spelling of every third word. This raises the interesting question whether our medieval lawyers actually wrote the characters that are now visible, or employed professional scribes. That question we cannot answer with any certainty. Two or three of our manuscripts have some æsthetic merits—*Y* is handsome, and *D* deserves the 'fair' which Hale bestowed upon it—but most of them seem to have been cheaply and rapidly produced, and the writing, though in general it is easily legible, cannot be called beautiful. We dare not say that it is too good to be the work of the apprentices at law, for we know too little of their education. When, however, we observe the way in which a single book seems to acquire some cases from one source and some from another, we may imagine that the man for whom this book was made sat dictating to a clerk, while open before him lay two or three volumes that he had borrowed.

Of the corruption of proper names it is needless to speak. Even in our best books there are bad instances, and indeed, so far as our experience goes, we cannot say that relative correctness in the matter of proper names is always a good index of the general merits of a manuscript. But what we would notice at this point is something different from corruption. Names are deliberately changed. Sometimes, though by no means always, we can see why this is done. If there are two Maries in a case, it is better to call one of them Sarah; if there are two Christianas in a case, it is better to call one of them Beatrice. We need hardly explain that 'one Adam' is merely 'a certain man,' and that 'one Alice' is merely 'a certain woman.' Even 'Alice la Blunde' is merely a female A.B. But the maker of one of our books, namely *P*, seems to have amused himself by inventing names. There is a case concerning the barony of Ewyas; he calls it the barony of Malvercote.[1] There is a case in which he makes believe that the surnames of the parties were Pope, Patriarch, and Cardinal. Really, so it seems, the name of one of the parties was Carlisle, or in French Cardoil. This degenerated into Cardial, which suggested Cardinal, which suggested Patriarch and Pope.[2] A little frivolity of this kind enlivens the work of the copyist or the dictator. But it is not easy to say where blundering ends and this sort of jesting begins. We will give one very curious example.[3] The question was raised whether a certain place in Bedfordshire was a vill or a hamlet. The

[1] See below, p. 44. [2] See below, p. 163. [3] *Pypard* v. *Clerk*, inf. p. 77.

name of that place is Over Caldecote, which on the roll appears as 'Oure Caldecote.' Now in the report as given by one of our books—a book (*P*) which shows a liking for 'fancy names'—we find instead of Over Caldecote the words 'nostre Warderobe'; and this occurs twice, so that we have not to deal with a mere slip of the pen. Precisely what has happened we cannot say, only it strikes us that 'nostre' looks suspiciously like a mistranslation of 'oure,' and that the 'robe' of 'warderobe' may be connected with the 'cote' of 'Caldecote' by some tie of stupidity or jocosity. We must not be surprised if the name we know as 'Devereux' appears as 'de Wros'; how it becomes 'de Vyayn' we cannot tell.[1] When the Prior of Gisburn becomes the Prior of Walsingham, we may guess, perhaps, that someone has chosen to substitute the name of a famous for that of a much less famous house; but we also see Soleburne, Bisebourne, Bylling-ham and Willingham.[2] In short, proper names are treated with proper contempt, for the law is no respecter of persons. Of this we ought not to complain; but we may rightly complain when mere letters, such as 'A,' take the place of names, and those letters are not consistently used. Some few cases, so it seems to us, have been hopelessly ruined by this malpractice. Especially we would mention some brief notes touching the question whether a 'fine'—we mean a 'final concord'—is receivable. Do the 'limitations' in the projected fine offend against a rule of law? All depends on an exact statement of the limitations, and, if anything goes wrong with the letters that should serve instead of names, the report may be useless to us, or worse than useless. Our hope of help from the record here touches its lowest point.[3]

Proceeding upwards from spelling and the treatment of proper names, we see an immense number of variations which might be described as verbal, thereby being meant that, though the words are different, the meaning is approximately constant. These verbal variations are, we may hope, fairly, though incompletely, represented in our footnotes. Of what might be called merely grammatical variations we must hardly say a word in this place, nor can we afford to give many specimens. Suffice it that the order of words is often recast.[4] It may be worth remembering at this point that in the

[1] See below, p. 16.

[2] See vol. ii. pp. 21, 24.

[3] See, for example, vol. ii. p. 18 (Case 108).

[4] We are compelled to keep our collection of variants within somewhat narrow bounds. When the matter at stake is purely verbal and we give a variant from a particular MS., e.g. from *B*, we do not imply that all the MSS., except *B*, conform exactly to our text.

fourteenth century the French language, even in its native land, was in a state of flux. It was becoming always more 'analytical'; it was losing inflexions, and therefore the sequence of words was assuming an ever greater importance. A little investigation would, we think, show that occasionally one of our scribes, or one of the 'dictators,' has turned a sentence inside out merely because in its original form it seemed to him stiff and awkward. Also we might illustrate a considerable diversity of opinion as to the occasions on which *ne* can be used without *pas*, *point* or *mie*, and as to similar questions of more or less interest. But we must speak of matters which concern us more nearly, and we see many variations which cannot be relegated to the historians of grammar. It seems at times as if we had before us the work of someone who took pleasure in changing words and phrases: some one who, for example, could not see 'heirs of their bodies issuing' without substituting for it 'heirs of their bodies begotten (*engendrez*).' A sort of change that looks larger than it is consists in putting 'you,' in the place of 'he,' or 'he' in the place of 'you,' and then in effecting more or less perfectly those consequent alterations which grammar demands. Sometimes we can see, sometimes we cannot see, that an ambiguity has thus been avoided. Often it is absolutely impossible for a modern to say which of two phrases is the better. Take the following for example. Herle ends a little speech with one of these two sentences:—'Jugement, si a nul fet de cousté condicionel devoms respondre.—Jugement, si par nul fet costeyn q'est condicional nous devez reboter.'[1] We do not know which is the better; both are intelligible, both appropriate; and if we did know which is the better, we should not yet know which is the original. In the presence of a multitude of such variations, which clearly are not the outcome of carelessness, our inclination would be to suppose that what seems to us the better phrase is the newer; but the inference would not be safe, for there are people who when once they have set about improving a text know not when to stop. It would be needless to say that plenty of mistakes were made. The omission of a passage that begins and ends with the same word is a common event. But what is of much greater interest to us is the deliberate tinkering that we have been endeavouring to describe. If the maker of a book takes this much licence, will he stop there? When he makes so many changes, can we trust him to make none that are material? If he paraphrases a speech, may he not paraphrase a debate?

[1] See vol. ii. p. 12.

Of the omission of cases we have already spoken; and this by itself would be enough to show that these books were not intended to be used as we use our 'authorities.' Suppose that counsel had cited a case from the third year of Edward II., the reply that there was no such case might very frequently have been given with great plausibility, for only about one half of the total number of cases ascribed to that year can be found in any one of our manuscripts. The same reflection is suggested by a fact which seems destined to give serious trouble to editors. Very little care was taken about the insertion and preservation of rubrics which should mark the beginnings of new terms and new years. The suppression of proper names points in the same direction. By removing them we deprive ourselves of a ready means of identifying cases. Nothing less distinctive, nothing less citable, could be imagined than the initial phrases of these reports, such as 'Une feme porta son bref de douwer.' And let us not explain this by saying that the men of the time could do no better. On the contrary, we must remember that the educated men of the time were great citators of 'authorities.' The medieval scholar, were he divine, philosopher, canonist, or civilian, could give you a text for everything, and a text that you could find without much labour if you had a copy of the book to which he referred. Moreover, if we turn from our reports to our records, we pass into a well ordered world. When there was a question of estoppel or the like, our lawyers knew how to allege a record with great particularity. They knew how to be accurate when they pleased. They would minutely criticize the grammar and even the spelling of a writ, and would take advantage of the smallest 'variance' between writ and count.

Then, besides omission, we see condensation. In one book we may find a fairly full report of a debate, while in another we see a very brief note that seems to point to the same discussion. Sometimes this note is so meagre that we can by no means be sure that we are right in connecting it with the report that we have found elsewhere. Here is an example.[1] One book (*M*) says this: 'Nota de suyte real a hundred, q'est due par reson de la persone, ne put homme vers son seignour avoir acquitaunce.' A closely related book (*P*) says the same, but in passing puts an interesting gloss on the term *suyte*: 'scil. venue, qar sute est pur tenemenz.' Then a book (*B*), remote from *MP*, reports an action of mesne in which acquittance from suit to a hundred court was demanded, and which may well have been —we can say no more—the foundation of this remark about 'suit

[1] See below, pp. 119, 120.

royal.' In this instance we happen upon a combination that is worth mentioning because of its rarity: of our eleven books eight are silent, *B* gives a report, and *MP* a very short note. Even if we put out of sight notes of this character, condensation is often to be suspected. It happens not infrequently that we obtain two versions of a case, and that the two, when placed side by side, look as if they had been obtained from a common source by different condensers. There is a considerable tract throughout which this seems to be the usual relation between the texts that stand in *ADQ* and the texts that stand in other books. The one text has not been made out of the other, but both might have been extracted from a longer version. Sometimes the one party and sometimes the other deserves the prize for perspicuity. Lastly, the Bodleian manuscript, which we have called *X*,[1] shows us that there were people who wished for highly condensed reports: for reports that had been reduced to one-half or one-third of their original length.

The 'headnotes,' or rather sidenotes, that appear in our manuscripts deserve a moment's attention. In many books a note—something more than a mere catchword such as 'Intrusion' or 'Garde'—is set in the margin against the beginning of every or almost every case. Often this was done by the hand that wrote the text. These notes already aspire to fulfil the office of our modern 'headnotes': that is to say, to state the point of the case in the fewest words. A not uncommon model is the following: first we name the form of action, such as 'Entry' or 'Dower,' then we add 'where it appears that (*ou piert qe*),' and then we proceed to say what to our mind this case proves. Thus, for example: 'Covenant, where it appears that I shall have a recovery against the lessor if I am ejected by the escheator. *Secus* if by another stranger.' It need hardly be said that in his endeavour to be brief the annotator sometimes becomes obscure, and that, if we would understand him, we must set more store by law than by grammar. What, however, demands mention in this place is the great variety of these notes. We cannot say that they are never transcribed from book to book; but we can say that two closely related manuscripts will often give entirely different notes. We seem to see the maker of a book writing or dictating the text of a case and then asking himself what in general terms he can learn therefrom. That is the worst of our position. We are not among mere copyists; we are among intelligent people, who while they transcribe or dictate are teaching themselves the art of pleading,

[1] See above, p. xxxi.

But it is time that we should recur to the grave and difficult question that is raised when we see two or more apparently independent reports of a single case.

We have spoken above of what we called 'the limits of collatability' and of the difficulty of drawing them. We have also given some instances (*Berenger* v. *Barton* and *Rasen* v. *Furnival*) in which they are clearly transcended. We wish to give one instance which lies near the line, and which seems to us instructive; so we will here print literal translations of two texts. Unless we are greatly mistaken, we may identify the action to which they relate with *Tichmarsh* v. *Stanwick*.[1]

(I.) A woman brought her writ of entry *ad terminum qui praeteriit* etc. The tenant vouched to warrant [one] who came into court and warranted and asked what she [the demandant] had for the lease.—*Scrope*. See here a writing, which witnesses that C. our grandfather, of whose seisin we have counted, leased the tenements etc. to one H. your ancestor, whose heir you are, for term of his life.—*Herle*. Ready etc. that H. our ancestor had nothing by the lease of C. your grandfather and received nothing. —*Scrope*. We have at your own request put forward the deed [made to] your ancestor, whose heir etc., which witnesses as above. Judgment, whether you ought to get to any averment against the deed to which you yourself are privy.—*Herle*. It can stand together[2] that this is a deed made to our ancestor and that he had nothing by the lease of your grandfather.—*Scrope*. Then you can confess the deed and afterwards avoid it; so it seems that you ought to answer to the deed.—*Malberthorpe*. If the tenant put forward a deed, that would be something [to the point]; but where the demandant puts forward a deed, that does not bar the averment which is in traverse of his action.—And the averment that he had nothing by his lease etc. was received, notwithstanding the deed which witnesses that the tenements were leased for the term of life of the ancestor of the tenant by his warranty etc.[3]

(II.) A man brought his writ of entry *ad terminum qui praeteriit*.—*Herle*. What have you [to show] that the tenements were thus leased?—*Scrope* put forward a deed, which was read

[1] See below, p. 63. The first text we take from *P*; the second from *B*.
[2] That is, the two assertions are compatible.
[3] A vouchee who has warranted becomes 'tenant by his warranty.'

etc.—*Herle.* Still we had nothing by his lease; ready etc.—*Scrope.* To that you shall not get, for you have demanded what we have for the lease and afterwards demanded a hearing of the deed, wherefore it behoves you to answer to the deed.—*Bereford.* It may be that the writing was made and still that he had nothing by the writing.—*Herle.* Even if I answered to the deed, I could give the answer that I do now; therefore there is no need to confess or deny the deed.—And the averment that he had nothing by his lease etc. was received, notwithstanding the deed which witnesses that the tenements were leased for the term of life of the ancestor of the tenant by his warranty etc.

Two reports or one report? The differences are not very small. It will have been observed, however, that the two end with precisely the same statement, namely: ' et l'averement fut receu q'il n'avoit ren de soun lees etc., *non obstante facto* qe tesmoigne lez tenemenz estre lessez a terme de la [1] vie le ancestre le tenant par sa garantie.' This statement about the reception of the averment is, no doubt, a simple affair, and we might perhaps urge that two men who had to make it might employ exactly the same set of words, and might even slip from French into Latin at exactly the same point. But if we look into the matter more closely we shall see that, while this final sentence is a good end for the first text, it is not a good end for the second. The two have not been telling us the same story. According to the first text the original tenant in the action vouched a warrantor, who in performance of his duty made himself ' tenant by his warranty,' and then proceeded to resist the demandant's claim. Again, according to the first text the lease was granted by the demandant's grandfather to some ancestor of the warrantor. In two respects the second text simplifies this tale. Will the reader look at that text, stopping short of the final sentence? No word will have suggested to him that there was any voucher, and we think that he will have understood that the lease was made by the demandant himself to the tenant himself. Then in that final sentence he will for the first time see ground for a conjecture that there must have been a voucher—for how else could a man become ' tenant par sa garantie '?—and for the first time he will see cause for a conjecture that the lease was made, not to the person who is defending the action, but to an ancestor of his. What, then, is the explanation? We fear

[1] *B* omits *la*.

that it is this : namely, that someone, having the first text before him, set himself to improve the report, but failed to do all that consistency demanded and ended by copying a sentence that he ought to have modified. His simplification of the facts seems to be legitimate, though it involves a process of legal inference. As regards the matter that was debated, a vouchee who had warranted stood, we take it, exactly in the place of the person against whom the action was originally brought. Also it mattered not, so we should suppose, whether the demandant had executed a lease to the tenant or an ancestor of the demandant had executed a lease to an ancestor of the tenant. But if, as we think, there has been transcription, we must allow that it has been of the freest kind. We lay little stress on the fact that in the second report the chief justice makes a remark which in the first proceeds from Herle, for *Ber.* (the form in which the chief justice's name is written) and *Herle* may have been confused. But if our hypothesis be true, someone has held himself at liberty to write a little speech for Herle : 'Even if I answered to the deed, I could give the answer that I do now ; therefore there is no need to confess or deny the deed.' The interpolation of this remark would put an accent on the point of the case, and, after what we have seen elsewhere, we cannot say that such an interpolation would have been deemed unjustifiable by conscientious collectors of precedents. Whether we shall have convinced our readers that in this instance we have not to deal with two aboriginally independent reports we cannot say. We chose that instance because it stands near the boundary. Before we leave it we must add that the record bears out the first and longer version. There was a voucher, and the alleged lease was made by the demandant's grandfather to a person who seems to have been an ancestor of the warrantor, but who at any rate was neither the warrantor himself nor the original tenant in the action. Lastly, we may notice that the reported differs slightly from the recorded issue. Instead of 'he had nothing by the demise,' we find on the roll 'the grandfather did not demise as the demandants by their writ suppose.' We say 'demandants,' for really the action was brought by husband and wife ; but the small simplification that is effected by substituting for them a single demandant, though typical, is by this time hardly worthy of remark.

On either side there are dangers. We must neither overestimate the number of aboriginally independent reports nor must we exaggerate the liberties that were taken with existing texts ; but that those liberties were large we cannot doubt. Clearly simplification was

permissible. But if once a man has begun to reduce a legal debate to its lowest terms, he may find himself tempted to invent as well as to omit. A modern reporter knows how to seize the one 'reportable point' in a complex case and to set it before us without saying or suggesting anything that is untrue. He is practising an art which was once in its infancy. Six centuries, we may say, look down upon him from his bookshelves. Moreover, he feels himself responsible to the profession and the public, and this sense of responsibility we must not lightly transfer to the medieval apprentice at law who was making a collection of cases for his own proper use. Therefore it would not shock us to learn that in some of these oldest reports there is an element due rather to imagination, scientific imagination, than to faithful transcription. If we could talk to the maker of one of our books and draw his attention to the apparent fact that it contained sentences and speeches that were not to be found elsewhere, we do not feel sure that we should not be told that if no judge or no counsel made just that remark, someone ought to have made and must be taken to have made it, since it or the like of it is required for the logical development of the debate. For instance, if we look back to the treatment of that question about merger which was under our examination in the case of *Rasen* v. *Furnival*,[1] it does not seem to us at all impossible that a collector of cases might say: 'Here in the book that I have borrowed is a case in which a question arose concerning the merger of an estate tail; that is evident; but the text does not make the legal point sufficiently prominent; that point lies concealed away in the concrete facts; I shall touch the case up a little; I shall introduce the term 'reversion' and I shall introduce the term *enpuré*, and when that is done I shall have an instructive report.' However, this is a matter about which we desire to speak with great caution. As our work proceeds, we shall, it may be hoped, learn more and more of the ways and doings of the men who compiled these volumes.

In the course of this discussion we have incidentally appealed from the reports to the record. Of the aid that the record gives us if we would understand and criticize the reports we must now say somewhat more, for, though this is a subject which Mr. Pike has made his own, we must endeavour to apply to our own problems some of the lessons that he has taught us by exposition and example.

We are accustomed to say that at some time or another, never yet precisely defined, and by a process, the details of which have never

[1] See above, pp. xli–lii.

yet been accurately traced, the practice of oral pleading was supplanted by the delivery of written pleadings. The change that can be thus glibly described was, we take it, a change of far-reaching importance, and modern lawyers who live under the Judicature Acts and the Rules of the Supreme Court can hardly regard it as having been in all respects a change in the right direction. The system of common law pleading, when it has been fully developed, is, as we all know, one in which the Court does not and cannot play any part until the parties by the interchange of written documents have for good and all come to some one definite issue: an issue of fact or an issue of law. We say 'for good and all.' It is indeed possible that the defendant may successively plead various pleas of the 'dilatory' class, and, having failed in all of them upon demurrer, may yet fall back upon a plea in bar. But at each step when the parties appear in court they appear there to argue a question that has been exactly formulated by written pleadings, and if the defendant, having been beaten at one point, is able to offer battle a second time, that is because the Court has awarded that he answer further (*respondeat ouster*) and this judgment forms part of the record. It should not be forgotten that if the defendant is beaten on any issue of fact, even though that issue be raised upon a dilatory plea, this is a total defeat. In other words, the judgment is *quod recuperet*. It is only when he is beaten upon an issue of law arising out of a dilatory plea that he has a second chance.[1]

In the days of oral pleading, in the days of Edward II., this was otherwise.[2] We are tempted to say that argument precedes pleading or that pleadings are evolved in the course of argument. We have at this point to recall the important fact that the pleader, the *narrator*, does not in any strict sense of the term 'represent' his client. If a litigant appears by attorney, that attorney does represent his client. By a solemnly recorded act he has been put in the litigant's place 'to gain or lose' in that action. But the *narrator* is merely a friend who 'is of counsel with' the litigant, and the record takes no notice of him.[3] Consequently what he says does not bind his client unless and until the client by himself or his attorney 'avows' it.[4] This gives an opportunity for what we may call tentative pleading. Counsel for

[1] See Stephen, Pleading (1838), p. 115.

[2] Reeves, Hist. Eng. Law, ii. 349, has some good remarks upon this matter.

[3] When a fine is levied, the *narrator* is named. This we suppose to be a precaution against malpractice in a matter in which the utmost good faith may be required, since strangers may be affected by the fine.

[4] See, for example, Bereford's remark on p. 129: 'He was not avowed.'

the defendant, let us say, experimentally offers a plea. Some little discussion ensues. He discovers that the opinion of the Court is against him, or, in other words, that if he definitely pleads that plea he will be defeated. So he will not 'abide (*demorer*)' there; he will not let himself be 'avowed' by his client; he tries some other line of defence. Then of all this tentative and experimental pleading the record takes no cognisance. For the time with which we are dealing we might, so it seems to us, lay down some such rule as the following: Where in more modern days we should find a dilatory plea, a demurrer to that plea, and a judgment for the plaintiff bidding the defendant answer further (*respondeat ouster*), we shall as a general rule find nothing at all upon the roll. If the reader will look, for example, at the report and record of *Frowyk* v. *Leuekenore*,[1] he will see what we mean. One argument after another is urged against the validity of a writ of ravishment of ward brought by a guardian in socage, and they are arguments which go down pretty deep into the substantive law, for the position of such a guardian, who has no pecuniary interest in the marriage of the heir, is radically different from that of a guardian in chivalry, for whose benefit this writ has been devised by statute. All this, however, the record utterly ignores. If it were our only source of information, we should have no ground for believing that any question of law was raised or raisable; we should merely see the defendant pleading a justification. In theory, we take it, no plea in abatement of the writ has been pleaded, though the validity of such a plea has been discussed at some length. And so in numerous cases a litigant seems in effect first to demur and, having been beaten on the demurrer, then to traverse his opponent's assertion or to introduce some new matter of fact. We say that he does so 'in effect'; but we take it that 'demurring' is just what he has not done. He has talked about demurring, but, discovering that the Court is against him on the question of law, he has retreated to what he hopes will be a stronger position. A good instance our readers will find in the trebly reported case of *Archbishop of Canterbury* v. *Percy*.[2] It is a replevin action. The defendant avows the taking good and lawful. The plaintiff, he says, holds of him four vills by homage, fealty, the service of a certain number of knight's fees and some other services. The only seisin that is laid is a seisin of scutage, and the cause of the taking was that the plaintiff's homage and fealty were arrear. Now this raises a question of law. Can an avowry for homage and fealty be maintained when the only seisin that is alleged

[1] See vol. ii. p. 157. [2] See below, pp. 26–37.

is a seisin of scutage? That question is debated at considerable length, and we may say that, at least for practical purposes, it is decided in the avowant's favour. In one report the chief justice says 'The avowry is good enough.' In another he says yet more; for he says 'We award that the plaintiff plead over.' Then the plaintiff's counsel plead the commonplace 'Outside his fee.' When we turn to the roll, all that we see is just this commonplace plea followed by a joinder of issue. No syllable is there which suggests that the avowry was open to objection and raised an arguable question of law. And then, if we look back to the third of our three reports, we shall be informed that when the chief justice told the plaintiff to plead over (*dire outre*), this was not said by way of judgment (*ceo ne fut mye par agard*). In effect, as we understand the matter, a litigant in these old days enjoyed the monstrous liberty—for as such it would have been regarded in a later age—of first 'demurring' and then 'pleading'; only these are not the terms that we ought to use. When it comes to the pinch, he will not demur; but his 'inchoate demurrer,' as Mr. Pike has aptly called it,[1] has served its purpose; he has been able to make an experiment and to ascertain that a demurrer would be unsuccessful or at any rate dangerous. The introduction of written pleadings is an episode in English history which has attracted far less attention than it deserves. It, if we may so say, forced our common law into a prison-house from which escape was difficult. Instead of being able to ascertain the opinion of the judges about the various questions of law that are involved in the case, the pleader, without any help from the Court, must stake his reputation and his client's fortune upon a single form of words. His pleadings therefore become very 'nice' and 'curious' and tricky, while the judges have less and less opportunity of giving effect to their opinions about the weightier matters of the law.

We are at present disposed to think that very often, perhaps normally, nothing in the nature of 'a pleading' went down on to the roll until the whole process of oral pleading was at an end. It seems to us that the extent to which a demandant's count is abbreviated by the use of the *etc.* is affected by the nature of the subsequent pleadings. To explain this might take us too far afield; but one example will show us that there may be much discussion where the roll shows no pleading. One William atte Thorne brings an assize of novel disseisin against Bartholomew Peche.[2] If we follow the report, we shall probably say that the defendant puts in a plea stating that the plaintiff

[1] Year Books, 12–13 Edw. III. p. lxxxv.

[2] See below, p. 93.

is his villein; that the plaintiff replies relying on a recovery in a mortdancestor against the defendant's grandmother; that the defendant rejoins, showing how his title to the plaintiff is derived from his grandfather and not from his grandmother; that the validity of this rejoinder is debated; that the Court takes the defendant's side; that thereupon the plaintiff 'does not prosecute'; and that judgment is given for the defendant. We turn from report to record, and of plea, replication, rejoinder we see nothing. William complains that he is disseised; 'and afterwards he does not prosecute'; so judgment is given against him. That we read, and no more. All those 'pleadings,' as we were inclined to call them, seem to be regarded as non-existent, since they led to nothing. They never became recorded pleadings. We may surmise that the protonotary or some other clerk took rough notes of the assertions that were offered by counsel on the one side and the other. Also we may see the objection raised that an advocate is attempting to return to a position that he has already abandoned.[1] Still it appears to us that very often nothing is set upon the roll until an issue has been joined or the case has been disposed of by reason of nonsuit or the like.

At this point one of the chief justice's proverbial phrases may detain us for a moment. A widow demands her dower.[2] Counsel for the tenant objects that at her husband's death she was not old enough to earn her dower: 'If, Sir, you see that she is of such a condition that she can deserve dower, we will answer.' To this Bereford replies: 'You say that if we see that she could deserve dower, you will answer her. But if at this point we award that she is able, that will be for wine and candle.' We take this to mean: 'No, you must not suppose that if you are defeated at this point, you will be allowed to plead another plea. An issue of fact will have been found against you, and our judgment will be final: it will be, not that you "answer over," but that this young woman is to recover her dower.' Wine and candle are the end of the day's work. A friend tells us that in Devonshire people say 'That's supper-beer and bed,' thereby meaning 'That's all over,' or 'There's an end of it,' and this we suppose to be the sense of the chief justice's remark. In later days a defendant's counsel, if he proposed to plead a certain plea, would have had in the first instance to make up his mind once and for all as to whether that plea would be dilatory or peremptory, as to whether it would be a plea to the writ, or a plea to the count,

[1] For example, see *Bygot* v. *Belet*, below, p. 129.

[2] See *Batecoke* v. *Coulyng*, below, p. 190.

or a plea to the action. Each class of pleas had its appropriate 'conclusion,' and in some cases it had also an appropriate initial formula. It would have been impossible, therefore, for a pleader to launch a plea and to leave the question whether it was dilatory or peremptory to be decided by the course of the debate in court. But this, so it seems to us, is what could be done when as yet no written pleadings had been interchanged. You may propound a plea as if it made only for the abatement of the writ or of the count, and if the Court is unwilling to accept it in that character, then you can try whether it will be more acceptable as a plea in bar of the action; and this you can do without any 'amendment' of a written document and without there being any solemn adjudication of a point of law. In short, you may hope to lick your plea into shape as the debate proceeds until you are ready to abide a verdict or a judgment 'for wine and candle.'

One consequence of the state of affairs that we have been endeavouring to describe is that the number of points of law that these earliest Year Books put before us as having been solemnly adjudged is by no means large. In case after case the reported discussion ends in what should be regarded as no 'decision' but as 'an intimation of the opinion of the Court.' In case after case the modern maker of headnotes would hardly dare to go beyond the diffident *semble*. What has happened is that counsel has suggested a plea; then there has been a little argument; and then, to use a common phrase, he has been 'driven further (*chacé outre*).' Sometimes a judge will have told him to find another answer or to say something else (*responez outre, dites autre chose*); sometimes no judge is supposed to speak, but our *narrator* seems spontaneously to waive what he has been saying. The makers of our Year Books, as appears from the marginal notes, generally draw the inference that an abandoned position was untenable, and no doubt this inference is usually sound, though cases may easily be conceived in which an advocate retreats from ground that he thinks to be defensible, because he believes that he will be yet stronger elsewhere. Once more let it be remembered that defeat upon an issue of fact is checkmate, and therefore a pleader may, for example, abandon an inchoate confession and avoidance, not because he does not think it good in law, but because he feels more certain of a verdict upon a traverse. Be that as it may, it is important for us to perceive that a great deal is said by the justices that is not said by way of award (*agard*). Theoretically considered, it is rather advice than judgment. Bereford, C.J., according to

one of our manuscripts, had a way of saying: 'If you abide our judgment at that point, you will have it with the sauce'[1]:—the sauce being fine or amercement. This, it were needless to say, is a strong 'intimation of opinion.' We may find much feebler forms in descending scale until the justices ask a pleader to 'ease the court' by not insisting on a troublesome question. Formally to adjudge a novel point of law they were, if we mistake not, extremely unwilling. Too often, when an interesting question has been raised and discussed, the record shows us that it is raised, and then tells us no more. A day is given to the parties to hear their judgment. A blank space for the judgment is left upon the roll, and blank it remains after the lapse of six centuries. What happens in these cases we do not know; but we fancy that very often the parties, weary of waiting for a judgment, patch up their quarrel without telling the Court anything about the compromise. In some future volume we, or some of our successors, may be able to explain more fully than we could at present how it comes about that so many records finish with an issue of fact or with an issue of law, and show no judgment and no verdict. At the moment we are only concerned to observe, first, that many of the discussions which we see in the Year Books leave no mark upon the roll, and, secondly, that they leave no mark upon the roll because, though the justices may more or less forcibly have expressed their opinion that a certain plea will be good or bad, there has been no formal adjudication.[2]

In a parenthesis we may remark that for the reason just given it is not always possible for us to affirm with certainty that we have found upon the roll the record corresponding to a given report. The report, it may be, contains no proper names. It speaks of one of the commoner forms of action: for example, dower. It shows how the tenant proposed some special plea, and how after a little sparring he took his stand upon 'Never so seised etc.' Turning to our roll we must not expect to see any sign of that special plea. All that we may expect to see is that in some action for dower the tenant 'comes and says' that the demandant's husband was never so seised that he could endow her; and it well may be that there are three or four entries on this roll which with equal aptitude will satisfy our requirements.

For all this, however, there are many instances in which the

[1] See below, pp. 80, 123.

[2] Sometimes judgment is given on a demurrer after the lapse of a long time. See, for example, *Hartland* v. *Beaupel* (below, pp. 164–174), a case which seems to have been argued at intervals during some six years.

record enables us to criticize the handiwork of the reporters. Now, if in general terms we asked the question whether our reports gain in credit by the application of this test, our answer would be that, on the whole, they come well out of the ordeal. At the same time we see that the reporters assume to themselves no little freedom in the simplification of the facts, and also we are constrained to hold them guilty of some serious mistakes. As to simplification, this may be a perfectly justifiable process. The object of the report is to display the legal core of the debate, and this may be the more visible if the facts are first refined. For example, it is not very unusual to omit links in the statement of a pedigree. Some parchment will be saved if we say that the land descended from Alan to John as son and heir, though, as a matter of fact, John was not Alan's son, but his great-nephew, and a full statement of the pleadings would have involved a 'resort.' In a given case this difference may be legally immaterial, and an accurate statement of the real facts would necessitate the introduction of a number of proper names, which would hamper rather than aid a student desirous of grasping as rapidly as possible the legal gist of the reported arguments. What at this point can be laid to the charge of the reporters—or if not of the reporters, then of the transcribers—is that they sometimes abbreviate a statement of facts until it will no longer explain the debate. Having begun the work of simplification, they have not had the courage to go through with it, so that towards the end of the report we have cause to complain that we have not been told something that we ought to know.

We must now give a few examples of the sort of criticism that the record enables us to bring to bear upon the reports. They must not be numerous; but only by picking some cases to pieces in the view of our readers can we convey what seems to us the right impression.

I. In three of our books (*ADQ*) two cases of 'annuity' follow each other.[1] In the first of these cases an anonymous plaintiff, who has brought a writ of annuity, produces a deed which bears date at London on the feast of the Decollation of St. John Baptist in 35 Edward I. The anonymous defendant objects to this impossible date; and true it is that the Decollation falls on August 29, while Edward died on July 7 in his thirty-fifth regnal year. The plaintiff replies that on a former occasion he brought a writ for the annuity,

[1] Vol. ii. pp. 124-6.

and that when the deed was produced the defendant pleaded a release, thus accepting the deed as good. The plaintiff's counsel urges the defendant to confess that the deed is his and to demur upon the point of law. Here the report ends with the remark that the case is pending. We are left in doubt, therefore, whether a good plea has been pleaded. So much for the first of the two cases. The second begins with the statement that an infant within age brought a writ of annuity, demanded certain arrears of an annuity of five marks, and put forward a deed. The defendant pleads that the deed was conditional: the annuity was to be extinguished if the plaintiff was advanced to a benefice of holy church, and to such a benefice he has been advanced. It then appears that the benefice in question was merely that of holy water clerk, and the Court decides that this was not such a promotion as was intended by the deed, so the plaintiff has judgment. Now there is no difficulty about finding the record of this second case—the case of *Henkeston* v. *Gosfeld*—and it throws no discredit upon the reporter. The legal point which he says was raised is that which was raised, and it was decided as he says that it was decided. But let us observe that he has simplified the story. The infant whose advancement to a benefice was to extinguish the annuity was not the grantee of the annuity and was not the plaintiff. Giles of Hinxton sued the parson of Pampisford for the arrears of an annuity of five marks and produced a deed dated the Sunday next before the feast of St. Margaret in 35 Edward I., whereby the defendant granted the plaintiff an annuity for his life. The defendant pleaded another deed, dated the feast of the Decollation of St. John in the same year, whereby the plaintiff conceded that the annuity should cease if his brother John, a clerk, should be competently promoted by the defendant or at his procurement. The defendant added that he had conferred a competent promotion upon John, a boy of twelve, namely, the office of bearing holy water in the parish of Pampisford. This we take to be a good instance of what was held to be legitimate simplification. The reporter, if we took him to task, would say that by getting rid of a third person and reducing two deeds to one, he had not only left the legal principle intact, but had displayed it to better advantage. It will not escape notice that the simplifying process involves a proposition of law about the capacity of an infant to accept the grant of an annuity; the reporter, however, may well have thought that at this point he ran no risk.

But now, turning back from the second of these two annuity cases to the first, we cannot help suspecting that there has been

either some mistake or else some 'simplification' of a kind for which we were hardly prepared. In the case of *Henkeston* v. *Gosfeld* the record shows two misdated deeds, though no word in the record draws attention to the error. There was no feast of St. Margaret (20 July) in 35 Edward I. and no Decollation of the Baptist. From this we may infer without much peril that the two annuity cases really are but one case. It does not seem at all improbable that in *Henkeston* v. *Gosfeld* the defendant's counsel began by objecting that the deed creating the annuity bore a false date, and then, finding that the Court was not with them, fell back upon another line of defence: if they did this, the record would not show it, for pleas that are but tentatively pleaded and then waived do not go on to the roll. But if that be so, we shall hardly say that the reporter has fully done his duty by us, since he has not told us of the defendant's retreat. Perhaps in the process of writing out his notes he has without sufficient care allowed a single case to become in his own mind two different cases. Or perhaps he thought that as the discussion of the erroneous date led to an assertion that the plaintiff was estopped from insisting upon the error, it would not be justifiable to represent that discussion as occurring in a case in which the plaintiff was an infant, and so he designedly made two cases out of one case.

II. We will turn next to *Frowyk* v. *Leuekenore*.[1] Evidently it was regarded as an important matter. A long report of it is given by seven manuscripts (*ADMPQSY*), and the facts to which the record bears witness are picturesque enough. Agnes, the widow of Reginald Frowyk, sues Thomas de Leuekenore and others for ravishing from her Henry, Reginald's heir, whose guardian in socage she was, and marrying him against her will and his will, to her damage of two hundred pounds. This raises the question whether an action for ravishment of ward will lie for a guardian in socage. The report shows how exception after exception was taken by the defendant's counsel to the writ, which admittedly was a novelty, and how one by one they were rejected. Then the defendant's counsel asserts that on the day stated in the count as that on which the ravishment occurred Henry was fourteen years old. A little discussion follows as to whether the plaintiff can thus be pinned down to a particular day, and as to whether guardianship in socage comes to an end when the heir attains fourteen or continues until he is fifteen. Then, however, the report distinctly represents the plaintiff's counsel as traversing the allegation that the heir had attained fourteen. Issue is joined,

[1] See vol. ii. pp. 157–163.

and a jury is to come from London because the heir was born there. Now we find on the rolls of the King's Bench what beyond all question is this case. We do not see, and we ought not to expect to see, any of that fencing which, according to the report, took place over the writ, for the defendant's counsel were 'driven from' their objections; but we do see what we do not expect to see, namely, an issue utterly different from that of which the report has told us. The defendant pleads a justification for seizing the heir. To be brief, the heir's father held land of the defendant's father by military service, and so the defendant took the heir, as well as he might. The plaintiff replies that nothing was held by military service, and that the defendant ravished the heir *de iniuria sua propria*. The issue is tried, and the plaintiff recovers two hundred pounds. Here we seem to have a flat contradiction. We may suppose, if we will, that when once the interesting question touching the validity of this new writ had been disposed of, the defendant, after making some play with an assertion that the heir had attained the age of fourteen years, once more changed his front and gave battle on a justification as guardian in chivalry. In that case we have an illustration of the truth, for truth we take it to be, that all that lies outside the very focus of the reporter's view is too often distorted. He was interested in the debate about this new writ; he was interested also in the question how long a wardship in socage endured; but, the questions of law being disposed of, he did not care whether issue was taken on one question of fact or on another.

III. This being so, the difficulty of saying with certainty whether we have found the record that is parallel to a given report is greatly increased. For example, we see a short note[1] that tells us how an infant brought 'formedon in the descender,' how the tenant urged that the action ought to stand over until the demandant's full age, and how the tenant, finding that the Court was not with him, abandoned this challenge, and tendered an averment that the gift was made, not in fee tail, but in fee simple. Now we have found upon the proper roll a case in which an infant brought formedon in the descender and the parole did not demur. Here, however, the tenant has judgment because, owing to a blunder in the statement of proper names, the writ is 'vicious.' We are far from asserting that on this occasion we have found the relevant entry on the roll; but that we have not found it we are not fully persuaded.[2] The 'reportable point' in this

[1] See below, p. 104.

[2] A plea to the disability of the demandant would precede a plea in abatement of the writ.

case was the failure or waiver of the 'suspensory plea' that the action should stand over. That point being disposed of, then, as we have seen in *Frowyk* v. *Leuekenore*, a reporter might be indifferent to the subsequent stages of the debate. Therefore, after hesitation, we have printed a note of a record, of which we can say no more than that it is the most appropriate that has met our eye.

IV. A case in which our foothold seems firmer may be briefly mentioned. On the roll we find a *cessavit* brought by a man who alleges that the tenant held of an ancestor of his, whose heir he is, and for two years ceased to do the service due to that ancestor.[1] The statement of the writ is at once followed on the roll by the statement that the demandant prays licence to withdraw from his writ and has it. In various books we find three short anonymous reports showing that the heir cannot maintain a *cessavit* for a cesser in the time of his ancestor. One version tells us that this was Bereford's opinion. Another tells us that it was awarded that the demandant take nothing by the writ. A third goes yet further and puts a judgment against the demandant into the mouth of Stanton, J. None the less, we are disposed to believe that we have found this case upon the roll. We have found a case which raised just the question that the reporters tell us was discussed, and, as the demandant withdrew from his writ, we may infer that the Court thought that it was not maintainable. So if some of the reporters affirm that the tenant had judgment, we can hardly hold this a grave error, though an error we take it to be.

V. Another instance of unsatisfactory reporting is *Zouche* v. *Cobham*,[2] and we will choose it for comment because the character of one of our best manuscripts is at stake. We have the record and three reports. The tale told by the record is briefly this:—Oliver de la Zouche and Joan his wife demand against Henry of Cobham the third part of certain manors whereof Joan was endowed by her late husband Michael de Columbers. Henry pleads a release executed by Joan in her widowhood and dated in 1285. The demandants in reply confess the deed and all that is therein contained, but say that when it was made Joan was under age, as they are ready to aver. Henry rejoins that on a certain day in 1284 Joan was party to a fine comprising other tenements, and he urges that, as she was then admitted to levy a fine, she cannot now be allowed to aver that she was under age on the day when she made the release. Thereupon a day in the Easter term is given to the parties to hear judgment. The three reports of

[1] *Copper* v. *Gederings*, inf. p. 105. [2] See vol. ii. pp. 189-192.

this case (found respectively in *ADQ*, *BLMPST*, and *Y*) we may call I., II., and III. They differ considerably, and it hardly looks as if any one of them was obtained from any other. Thus in I. the parties are anonymous, while II. knows that the demandants are Oliver de la Zouche and Joan his wife, which does not appear in III., and III., on the other hand, gives with approximate correctness the name of Joan's first husband, which it did not obtain from II. Then III. is guilty of an error which does not appear elsewhere, and this we specially notice, for III. comes from the excellent *Y*. That book supposes that as to part of the tenements in demand the tenant pleads a release and as to part a fine, the two bearing even date. The record compels us to say that this is not true. The words of the report are quite plain. The demand is for a third part of the manor of C. and a third part of the manor of D. As to the third part of the manor of C. the tenant pleads a fine levied in 13 Edward I, and of that fine a 'part' is produced. Counsel on the other side asks 'What about the other third part?' In reply a release is pleaded, 'and it was of the same date as the fine.' The record seems to prove beyond possibility of doubt that the report is in error. As regards the whole of the tenements there was but one plea, namely a release by deed, and it was only after the doweress had alleged her infancy by way of replication that the tenant pleaded a fine of earlier date than the deed. It may be said that the variance is not very material, though we cannot feel absolutely certain that in ascribing the two documents to the same date the reporter has not modified the question that had to be decided; at any rate, however, he appears to have given us a little bit of dialogue that did not take place. The other two reports are in this respect more correct. The lessons that we carry away from this case are that we are fortunate in having divergent reports, however much trouble they may give us; that we cannot wisely neglect any of them; and that a story is not always true because it is circumstantial.

We must say a little more of *Zouche* v. *Cobham*. Two of the reports distinctly represent the parties as coming to an issue of fact; namely, the question whether Joan was of full age when she executed the release. What is more, they seem to show that there was some discussion as to the proper venue. The lands in question, so we learn from the record, lay in Wiltshire. One book says that the jury was to come from London because the deed was made there. Another says that the jury was to come from London and Kent because the demandant was born in Kent. This variance, be it said by the way,

proves that one of these two reports is none too accurate. But was there any issue of fact? The record, as we have stated above, shows us the parties awaiting judgment on a question of law: namely, the question whether the fine and the deed taken together did not estop Joan from saying that she was under age when the deed was made. True that we see no precise 'joinder in demurrer'; but a day is given to hear judgment, and we cannot say that just what we call a 'joinder in demurrer' is to be looked for in the age of which we are speaking. Various possibilities are open. It seems possible that on some later roll the parties arrive at an issue of fact, the question of estoppel having been decided in the demandant's favour or waived by the tenant. Many of our criticisms must be taken as subject to the remark that an entry which we have seen upon the roll may not be the only relevant or the final entry. On the other hand, it may be that our reporters were mistaken when they told how an issue to the country was joined. One version (II.) does not tell us this, and the other two disagree about the venue. Talk about an issue of fact there may have been, and yet after all a demurrer on the question of estoppel. But in any case these reports of *Zouche* v. *Cobham* bid us be careful.

VI. A report that does not inspire us with confidence is that of *Saym* v. *St. John*.[1] It is very brief.

> One Denise de la Syme, executor of the will of John her husband, brought her writ of debt for forty pounds.—*Passeley.* Show to the Court that you are executor.—*Westcote.* See here the testament which says that she is to be the sole executor.—*Passeley.* There is one William [*corr.* John] son of John, to whom administration was granted by the ordinary along with Denise, who administered and is not named in the writ. Judgment.—Bereford, C.J. Since the testament says that she is executor, and this is the dead man's will, and we have nothing to do with anyone appointed by the ordinary unless he [the dead man] died without testament—in which case the ordinary can [grant administration]—you must answer.—Stanton, J., to the same effect. A quittance given by one who was not made executor would avail you nothing. Therefore etc.

This will hardly prepare us for what we see upon the roll. When the will was produced it showed that the testator appointed Denise sole executrix, but on the back of it was written that the subdean of Hereford, before whom the will was proved, committed administration to Denise and John, son of the deceased. Then the defendant pleads that John administered and gave the defendant an acquittance, which

[1] See vol. ii. pp. 20–2.

is produced. The plaintiff replies that John never administered any goods of the deceased by any commission of the said subdean. On this replication issue was joined. Should we not extract two very different legal propositions from the record and the report? The record strongly suggests that if John had administered goods of the deceased, the acquittance that he gave would have been valid. On the other hand, the report goes far towards telling us the contrary. It is possible to devise an excuse for the reporter. He represents the defendant as vainly endeavouring to abate the writ on the ground that John is not named in it, and it may be that at this early stage of the debate, of which the record would take no notice, Stanton, J., delivered a dictum that was not maintained in all its breadth after the quittance had been produced. If that be so, the report may be imperfect rather than incorrect. Still, to whatever cause the failure may be due, we cannot bring ourselves to say that we have a good note of this case.

VII. Another specimen that seems to call for unfavourable comment is *Gaunt* v. *Gaunt*.[1] What we learn from the record is briefly this: Some years ago, namely in 1298, Lora, the widow of Gilbert of Gaunt, brought a *cui in vita* against Adam of Gaunt. She claimed to hold certain tenements for life and alleged that Adam obtained them from her late husband, whom, while he lived, she could not gainsay. Thereupon the tenant, Adam, vouched the husband's heirs: a sister and two nephews. They appeared, but one of the nephews, Peter de Maulay, was under age and prayed that the parole might demur until he had attained his majority. Lora in reply relied on Stat. Westm. II. c. 40, which in effect said that a widow's action for the recovery of land alienated by her husband was not to be delayed by the infancy of a vouchee, but that the purchaser from the husband was to go without his recompense until the heir was of age. Thereupon judgment was given that Lora recover her seisin against Adam, and that Adam await Peter's majority for his recompense. All this the record puts before us as having happened in 1298. Now in 1310 Peter is of full age, and Adam has caused the vouchees to be resummoned. They appear and ask whether Adam has any specialty which binds them to warrant him. He produces a deed which witnesses that Gilbert gave the tenements to him for his life and which contains a clause of warranty. Thereupon, according to the roll, the vouchees enter into the warranty and concede that Adam is to have a recompense out of their land.

[1] See below, pp. 78-81.

Now our two reports of this case show that before the vouchees consented to warrant there was a brisk skirmish over their liability. Adam had vouched 'simply': that is to say, he had not said in his voucher that there was only an estate for life to be warranted; yet, when the specialty was produced, it became apparent that an estate for life was all that he claimed. Ultimately this objection was overruled, and we need not expect to see it upon the plea roll, the vouchees having been told by the Court that, if they insisted upon it, they would have to warrant 'with the sauce' of an amercement. But in the course of the debate a fact is elicited upon which much stress is laid: so much stress that we seem to be bound to treat that fact as an essential element in the case. Somehow or another it has come about that the vouchees themselves are seised of the very tenements that were to be warranted. This, it will be seen, makes it somewhat graceless for them to raise formal objections when they are called upon to do their duty. As the chief justice puts it in his proverbial way, 'They would like to have the eggs and the ha'penny as well'; they are refusing to warrant even when the warranted tenements have somehow or another come to their own hands. We say 'somehow or another'; but how did the tenements come to the husband's heirs after the wife's death? It is here that the reporters give us cause for complaint. They suppose that the vouchees were the heirs of both the husband and the wife; indeed, one of the reports expressly supposes them to be the daughters of the wife. So we get a neat little tale. Husband and wife are seised in fee simple in right of the wife; the husband alienates with warranty; he dies; the wife recovers from the feoffee; she dies; the land descends to the three daughters of the husband and wife; as her heirs they get the land; as his heirs they are bound by his warranty. Unfortunately it is quite certain that Gilbert of Gaunt left no issue, and that the vouchees in this action were his sister and two nephews representing dead sisters. Unfortunately also, as the record shows, Lora, the widow, claimed the land only for her life—a fact which the reports suppress—so that it would not descend from her to her heirs. The true story we cannot tell; but we may suppose that some reversion or some remainder brought the tenements to the husband's heirs after the wife's death. However, be the true story what it may, that told by the reporters is not acceptable. It may be that they have merely blundered; but it may also be that of set purpose they have simplified the tale. In order to provide a basis for the debate we must bring the eggs round to the person who is bound to pay the ha'penny:

on the widow's death we must bring the warranted tenement to the heirs of the warrantor. Well, the obvious way of accomplishing that feat is to give the husband and wife some children who will be heirs to both their parents; and a man might argue that he was justified in substituting a typical set of facts, a set of facts which might frequently occur, for some rarer combination of events which would require careful and lengthy explanation. It will be difficult, we fear, to distinguish in every instance between the mistake of a reporter who has never grasped the true state of the case and the rude science of a reporter who would improve his materials.

VIII. Another illustration of this tendency to invent explanations may be found in the interesting case which stands at the beginning of the present volume: *Ferrers* v. *Vescy*.[1] First we will look at the record. John de Ferrers brings a writ of formedon in the reverter against Clemencia, widow of John, son of William de Vescy. The demandant's case in this: William de Ferrers, whose grandson and heir the demandant is, gave the manor of Stapleford in Leicestershire with his daughter Agnes to William de Vescy (whom we will call William I.) in frankmarriage; they died, leaving a son, William II.; he died without an heir of his body: so the manor should revert to the heir of the donor. Clemencia has made default after default, and the demandant is upon the point of recovering when a certain infant named William de Vescy de Kildare (for brevity we will call him Kildare) appears upon the scene and prays that he may be 'received' to defend his right. His story is that William II. assigned the manor to Clemencia in dower and then granted the reversion (Clemencia attorning) to Kildare in tail. At this point a debate took place, the question being whether Kildare, who had not denied that William II. had only an estate tail under the gift in frankmarriage made to his parents, had shown sufficient title to justify his intervention. Ultimately, however, the decision of this question, which evidently was a question of some difficulty, became unnecessary, for the demandant denied a fact upon which Kildare relied, namely, the attornment by Clemencia; if she did not attorn, then the grant would be of no avail. The demandant alleged that William II. died seised and that Clemencia never had any seisin in his lifetime. Issue is joined upon this allegation. Kildare, as we understand the matter, has not yet been 'received,' and the result of a verdict in his favour will merely be that he will be 'received' and allowed to defend the action. It is not to be forgotten—and stress is laid upon this in the reports[2]—that

[1] See below, pp. 1–9. [2] See below, p. 7.

even if he cannot resist the reversioner's claim, he may be able to vouch the heir of William II. and so may secure a recompense.

This much of the story having been learnt from the record, the argument that we find in the reports will not be unintelligible, though it deals in ideas with which we are no longer familiar, such as the creation of estates by tortious conveyances. But one question will persecute us as we read. Who is Clemencia? To our great, though momentary, relief we shall find that one of our reports professes to know all about her. She is the widow of William I., who after the death of his wife Agnes (by birth de Ferrers) married Clemencia.[1] This may set us on asking the question whether before the Statute *de donis* a lady in Clemencia's position was entitled to dower, and on trying to recall what we have read about 'estates in fee simple conditional at the common law.'[2] Our record, however, bids us pause, for it tells us that Clemencia was the widow of no William, but of one John, son of William de Vescy. Also we remember at this point that the family of de Vescy was no obscure house, and, looking about a little, we soon find that our William I. did not outlive his wife Agnes. On the contrary he died in 1253 while she lived until 1290.[3] Consequently we are constrained to say that the story told by the reporter is not true. The true story runs, we believe, as follows. The reporter has placed Clemencia two generations too high. William I. and Agnes had a son John, who was his father's heir, but died (1289) in his mother's lifetime, leaving his younger brother, William II., as his heir, and without having 'attained an estate' in this manor, which had been given in special tail to his parents. But this John's widow was Isabel de Beaumont, a lady of some notoriety. Clemencia's husband was another John, sometimes called 'John de Vescy the younger,' who was a son of William II. He died in 1295 and in the lifetime of his father, who died without legitimate issue in 1297.[4] A claim on Clemencia's part to be endowed out of this manor, though her husband did not live to inherit it, would, we take it, be no absurdity, for her husband might have endowed her *ex assensu patris*. We observe, however, that she is not defending the action, and also that the demandant alleges that she was never seised during the lifetime

[1] See below, p. 4.

[2] The orthodox answer is that, if issue were born of the first marriage, the second wife would be entitled to dower. See *Paine's Case*, 8 Rep. 36a.

[3] Yorkshire Inquisitions (Yorkshire Record Soc.), vol. ii. p. 83.

[4] It may be sufficient to refer to Prof. Tout's article on *Vescy, William de*, in Dict. Nat. Biog. As to Clemencia's dower, see Cal. of Close Rolls, 1288–96, p. 144, and Cal. of Close Rolls, 1307–13, p. 526. I have to thank Miss Bateson for help at this point.

of William II. Then, if we ask who is the intervener, William de Vescy de Kildare, the answer seems to be that he was a natural son of our William de Vescy II.[1] Into that matter we need not go, though we may notice in passing that the deed which Kildare produces is called in the record the deed of 'William his father,' while on the other hand, had he been the legitimate son and heir of the tenant in tail, we should expect him to say so and not to rely upon a grant of dubious validity. What, however, concerns us is the course taken by the reporter who makes Clemencia a second wife of William I. This may be the mistake of a man who has listened to the debate in court; but when we consider that William I. died more than half a century before that debate, we think it more probable that we have here the guess of a transcriber who feels that Clemencia needs explanation and proceeds to explain her out of his own head. Our other reports show that the occurrence of three Williams de Vescy was a source of trouble and confusion. One of those reports has recourse to the expedient of calling the first William 'John';[2] the other seems to confound William I. and William II. in the course of the argument.[3] We are not, it will be observed, supposing that a reporter or a transcriber has done anything that is very culpable. He might say and, so we think, be right in saying that the 'reportable point' remains the same whether Clemencia be the step-mother or the daughter-in-law of the man who is said to have assigned her dower or even some utter stranger to the Vescy family. What is said of her title, though it satisfies curiosity and gives an air of reality to the case, is in strictness surplusage. Still the reporter who introduces imaginary facts is treading a dangerous path.

IX. The work of finding fault with these ancient reports is as hazardous as it is disagreeable. Let it be remembered, however, that there are occasions on which we cannot praise one version of a case without blaming another. An instance is afforded by *Bygot* v. *Belet* which has already come before us in a different context.[4] An assignee of one of the parties to an exchange would like to plead the exchange as a bar. It is questionable whether he can do this, and he is pressed to vouch his assignor. Two reports tell us that he did vouch, and that the voucher stood. Other two show that he pleaded the exchange, and the record supports them. However benevolent, however timorous we may be, we cannot bestow praise all round or give credence to everybody. And then we have seen how

[1] Dict. Nat. Biog. *loc. cit.*
[2] See below, p. 1.
[3] See below, p. 6, and observe the variants.
[4] See above, p. lii.

one reporter or a commentator deduces from a faulty or imperfect report of this case a rule of law which is certainly not that which the record would have suggested.

X. The simplificatory process which consists in the elimination of what is considered to be legally superfluous matter is well illustrated by *Nasshe* v. *Northaw*.[1] We have one version of a report which, without giving proper names, tells of an action brought by the heir of a disseisee against a disseisor. We have another version of that report which, without giving proper names, tells of an action brought by the heir of a disseisee against the disseisor's heir. If we speak in this instance of two versions rather than of two reports, it is because, when they are regarded as assemblages of words, the two texts seem to lie well within the 'limits of collatability.' Still there is this striking difference between them: in the one the tenant is a disseisor and in the other a disseisor's heir. Now the action against the disseisor and that against the disseisor's heir would not bear the same name. The former would be a writ *sur disseisin* in the *de quibus*;[2] the latter would be a writ of entry *sur disseisin* in the *per*. The requisite alteration has been made. One version has the characteristic words 'de quibus'; the other has the characteristic 'in quae etc. nisi per W.' We might guess perhaps that the movement has been towards simplicity: towards the suppression of an unnecessary person. Another report and the record show us that this conjecture would be correct. For anything that we know to the contrary, the change that was effected might fairly be styled an improvement: that is to say, 'the reportable point' could be put just as truly and rather more succinctly if the tenant in the action were supposed to be accused of a disseisin. Only we must remark that even the form of the writ is not deemed so sacred that it may not be bettered in the interest of brevity and legal science.

And now, if our readers will look at the reports of this case and ask themselves what is 'the reportable point,' we think that they will see the value of a note from the record. On our own mind those reports left a very dim and vague impression until we saw upon the roll that the tenant in the action produced a deed whereby the demandant's father '*gave*, granted and confirmed' the tenements to the tenant's father and his heirs. Then it seemed to become clear that, before using this deed as a release made to a man who was

[1] See below, p. 148.

[2] Though this may often be called a writ of entry, it does not contain the entry formula: 'into which he had no entry.'

seised, the tenant had proposed to use it as a charter of feoffment. Possibly we ought to have seen this all along; but we did not, and it is hard for a modern to follow all the tactical movements of medieval captains, especially when, as in the present instance, there seems to be a daring change of front in the presence of the enemy.

XI. In our first volume we printed three reports of *Mortimer* v. *Ludlow* and a note of the record that is found on the roll of the Michaelmas Term of 2 Edward II.[1] That record shows how the parties pleaded to issue, how a verdict was found and how judgment was given for the demandant. The reports show us debate that takes place while the parties are pleading to issue, and debate that takes place after verdict found. Now in two of our books, *M* and *P*, we find yet another report among the cases of the third year.[2] It concerns itself almost entirely with what happened at the trial of the action, and in so doing it illustrates the danger that besets a reporter who has not followed a case through all its stages. We cannot call it a perspicuous report, and, among other faults, it distinctly misstates the form of the action, substituting a writ *sur disseisin* for a *cui in vita*. But that is not all. A third book (*B*) gives a short report that we have found nowhere else: a report of an anonymous case;[3] and we cannot discharge our mind of the doubt that this is either an exceedingly bad account of *Mortimer* v. *Ludlow*, or, and this perhaps is no less probable, an imaginative exercise, if we may so speak, upon that case: a speculation as to what would have happened if the facts or the pleadings had been other than they were. It is impossible to bring home an accusation of this kind; but we owe it to our readers to say that our suspicions are aroused.[4]

XII. Our suspicions are not allayed by the procedure of the same book in another matter.[5] On the roll we find the record of a case in which a writ of account is abated on the ground that it was directed to the sheriff of Cambridgeshire, while the defendant was charged with receiving goods of the plaintiff at Boston, which lies in Lincolnshire. Three reports of this case are given us respectively by *ST*, by *R*, and by *L*. They agree fairly well, and the last of them gives the names of the parties in a tolerably correct form. A short note of the case is given by *B*; but that book also tells another story. It supposes a more elaborate case. A writ of account goes to the sheriff of N.

[1] See vol. i. p. 43.
[2] See below, p. 180.
[3] See below, p. 182.
[4] If, on the other hand, this report in *B* refers to the case of which we give a note (from *MP*) on pp. 109–110, we seem to obtain flatly contradictory results from two reports.
[5] *Ryvere* v. *Frere*, below, p. 126.

(which may stand for 'Nicole,' the French form of Lincoln), and the defendant is charged with receiving some goods in the county of N. and some in the county of C. He prays to be dismissed as regards the receipt in the latter county; but under pressure applied by Stanton, J., he ultimately denies the receipt. We think it by no means improbable that the reporter has made an imaginary case out of a dictum. In the real case there may have been talk as to what would have happened had the defendant received goods in divers counties. The plaintiff's counsel might well suggest that there would be some difficulty in carrying to its logical end the doctrine suggested on behalf of the defendant—namely, that the writ must go to the sheriff within whose bailiwick the receipt took place; and Stanton may have said that if there were receipts in more counties than one, attachment in one of them would be sufficient.

XIII. Yet another illustration will we choose, and this time it shall be one in which no record that we have found will help us to decide between contradictory reports. There is a class of cases in which verification by the roll is rarely possible. We come upon an account of some assize of novel disseisin or of mortdancestor which is taken in the usual way by justices of assize. Normally such an assize will leave no mark upon the records of either Bench, and, unless we know to what county it belongs, we can hardly hope to light upon the relevant assize roll. Now in two reports we see a mortdancestor brought against an infant (p. 186). He pleads that he is 'in' by descent, and therefore 'prays his age.' To this it is replied that he is 'in' by purchase, having been enfeoffed by his father. A verdict is taken on this point. The result of the verdict is that, in the opinion of the justice, the infant, though enfeoffed by his father, can claim to be 'in' by descent. So the action stands over until he has attained his full age. But what was the verdict? According to one report, a gift had been made to the infant's father and mother and the heirs of their bodies; the mother died, and then the father enfeoffed the child and is now dead. According to another report, a gift in tail was made to the infant's maternal grandfather and his wife; on their death the infant's mother entered as heir in tail; and after her death her husband enfeoffed the infant. In the one case the feoffor is tenant in tail after possibility of further issue extinct, and he enfeoffs a child who is the heir apparent under the entail. In the other case a tenant by the curtesy enfeoffs a child who, subject to the curtesy, is already tenant in tail by descent. We are far from saying that a lawyer was wrong in equating these two cases for the purpose

that he had in view. But that, unless there has been carelessness, is what someone has been bold enough to do. And then we notice that the three books which give us these two reports (*R* on the one hand, *ST* on the other) are not very remote kinsfolk.

XIV. A really bad blunder occurs in one of the two reports that we have of *Bacon* v. *Friars Preacher*.[1] It tells us that certain tenements were devisable because they were in Kent. Happily it gives the names of the parties, and the record shows that the tenements were as far away from Kent as they could be, for they were in Carlisle; and so one of the authorities that seemed to favour the devisability of lands held in gavelkind vanishes.[2] Someone, we may suppose, took 'en K.' to mean 'en Kent,' when it happened to mean 'en Kardoil.'

XV. It would be pleasant to say that, whatever mistakes may be made in the fringe of the case, 'the reportable point' is always stated with sufficient accuracy. And we believe, as well as hope, that this can generally be said. Still we must mention one instance which gives rise to serious doubt. We have two different reports which tell us of an action of detinue brought by executors.[3] Some sacks of wool had, so we are told, been bailed by their testator to the defendant for rebailment on demand. Then we learn that two questions of law were debated. First, the defendant contended that no action would lie as the executors had no specialty to prove the bailment. Beaten on this point, the defendant proposed to wage his law; but again he was defeated. In some of our books this case is ascribed to the second year and in some to the third, and to this uncertainty we may perhaps be allowed to ascribe our failure to find it upon the rolls. However, in one of our books (*L*) we have found what looks all too like yet another report of the same case.[4] Executors are said to bring an action of debt; but in the course of the briefly stated argument it appears that they are demanding six sacks of wool. The defendant offers to wage his law, and, though the plaintiffs object, the wager is received. Stanton, J., is supposed to say that the defendant ought to be in no worse position when sued by the executors than that which would have been his had the action been brought by the testator. In the other reports we see the defendant relying, but relying in vain, on this very argument. It is, no doubt, conceivable that we have here two different cases: the one an action of detinue where there has

[1] See below, p. 198.
[2] See Elton, Tenures of Kent, p. 73 ff.
[3] See vol. ii. p. 15.
[4] This will appear in our next volume.

been a bailment for redelivery, the other an action of debt where there has been a true 'loan for consumption (*mutuum*)' of a quantity of wool—such transactions were not unknown—and thus we might harmonize the two decisions by means of a contrast between debt and detinue. But before we adopt this charitable hypothesis, we must remember that the writ of debt when brought by executors was simply a writ of detinue, since the *debet* was omitted, and, on the whole, seeing that in both cases we have executors suing for sacks of wool, we cannot but fear that some reporter or some transcriber has turned a decision inside out and told us the very opposite of the truth. If that be so, the version which allows the wager of law seems to be that which should be rejected. It is much the briefer; we find it only in one book, and that book contains also one of the other reports.

XVI. After some hesitation we will refer to another case[1]—after some hesitation, for the result may be that the readers of our remarks will say that we are too dense or too ignorant to edit Year Books; but as perhaps that is what they ought to say and we ought to hear, we will proceed. In the Michaelmas Term of 3 Edward II. we have a report given by three manuscripts (*ADQ*) which runs as follows:

> (I.) A man brought a *praecipe quod reddat* against one Elise etc. for certain tenements. Elise made default. Therefore the moiety was taken into the King's hand and she had a day. At that day she again made default.—*Herle* prayed seisin of the land for the demandant.—A[lice] came into Court and said that Elise had nothing in the tenements except for term of life by the lease of Alice and that the fee and right remain in her person, and she prays to be received to defend her right.—*Herle.* You pray to be received etc. in the whole, whereas only a moiety is in danger of being lost. Do you then wish to be received for that which is not in peril?—STANTON, J. If you were received, could you say anything that she [the tenant in the action] could not say?—*Ruston.* We might do so, for we might vouch to warrant.—*Herle.* A prayer to be received is like an action, and an action she could not at present use, for she is coverte and her husband is not in court or named in the prayer. Without him you ought not to be received.—*Ruston.* A. [the intervener] has nothing in the freehold, for E. [the tenant] holds by the lease of A.; and she prays to be received by Statute [Westm. II. c. 3].—And she was received, and she vouched to warrant, and the voucher stood.

Are we wrong in saying that this report is not intelligible? This much is apparent: a married woman intervenes, is 'received' and

[1] See vol. ii. pp. 122–4.

vouches to warrant after a question has been raised as to whether she is to be 'received' for the whole of the tenements in demand or only for a moiety. But why should there be any talk about a moiety? Let us pass on to another report that is given in three books (*BMP*).

> (II.) A woman purchased tenements to herself and her heirs. Afterwards she leased to John for the term of his life. Then a writ of entry was brought against John and the woman. John made default. So the demandant prayed seisin of the land as regards one moiety, and it was taken into the King's hand. The woman who made the lease came before judgment and prayed that no default by John might turn to her prejudice, since John had in these tenements only the freehold for term of his life by her lease, and the reversion was in her, and she prayed to be received.—*Herle.* Is it in respect of the moiety or in respect of the whole that you pray to be received?—*Hedon.* The whole.—*Herle.* To that you ought not to be received, for you are not in the statutory case, except in respect of the moiety which is in peril of being lost by John's default. The other moiety you have saved by your appearance and it is not in peril. So you are not within the Statute.—*Hedon.* We pray to be received for the whole, for John was tenant of the whole of what is demanded as having freehold by the woman's lease, so that on the day [of writ purchased] nothing remained and nothing now remains in our person except the right of the reversion. And we have come before judgment.—She was received. And now as sole without her husband she vouches to warranty, and the voucher is accepted by the Court.

That the two reports refer to one case is scarcely dubitable. In both a married woman is 'received' and allowed to vouch as if she were sole after there has been debate as to whether she should be received for the whole of the tenements or for a moiety. But if the second report be correct, then the first is very bad, for it has omitted the important fact that the woman who prayed to be received was one of two persons who were jointly sued in the action. Having been compelled to make this remark, we can hardly stop there. Does the second report look correct? An action is brought against a man X. and a woman Y. The man makes default; the woman appears, and she prays to be received to defend her right in the whole, asserting that X. holds the whole for his life by her lease and that she is reversioner. She is received and vouches, and then it slips out in the last sentence that she has a husband living. Doubts arise. Is it likely that a writ for land was brought against a tenant for life and a reversioner as if they held jointly? Was a married

woman ever received when her husband was not in default? How was the woman described in the writ? Did a writ ever say 'and which X. (a man) and Y. the wife of Z. hold'? Possibly we should not have allowed these doubts to come to the surface, were it not that we have seen upon the proper roll a case which may, so we think, be the foundation of these reports. Cecilia brought a writ of entry against Robert and Meliora his wife. They vouched John Terry. He vouched Robert. Then Robert made default after default. Then Meliora prayed to be received and produced a charter showing a feoffment made to Robert and Meliora and their heirs. Meliora was received. She vouched John Terry. He vouched Robert, who in the end defended the action and pleaded to an issue of fact. Now here we seem to have the salient features of the reported cases. A married woman is received and vouches to warrant after there has been occasion for a debate as to whether she should be received for the whole of the tenements or for a moiety only. She and her husband were jointly sued; they were tenants by entirety in fee simple; they vouched Terry; he vouched the husband; the husband made default; the wife appeared and she prayed to be received. It was, we take it, plausible to urge, as Herle urges in both reports, that only a moiety of the land was in peril of being lost since the wife had appeared. This was not, it will be noticed, the common case of a husband and wife holding in right of the wife; the husband and wife had been jointly enfeoffed. Now this action had been dragging on its slow length for some years before the Michaelmas term of 3 Edward II. Apparently Robert and Meliora and their friend John Terry had played a game of circular vouchers which had long postponed the evil day. When this case came into court in that Michaelmas term some reporter—such is our conjecture—failed to grasp the past stages of the litigation, but, catching hold of the case by the middle, took some note of what seemed to be a remarkable point. Then he or others tried to 'write up' that note, but, not having preserved the true facts, he or they were put to inventing facts until the story of the woman's lease to one 'Elise' or one 'John' was concocted. If we have got to the bottom of this tale, then we are in the presence not only of very bad reporting but of highly imaginative reporting, and in any event we do not see how the character of these two reports can be saved. We have seen above how the maker of one of our books went about picking up learning from his friends. Reports would not become more accurate in the course of oral transmission. Also we recall the words of Roger North: 'A young

reporter's note-book is so disorderly wrote, or rather scratched, that none but himself, nor he after a few days, can make anything of it.'

XVII. That some lawyers were content to have in their books stuff that they did not and could not understand is a truth upon which we feel bound to insist for a moment. We will choose an example, *Seriaunt* v. *Banyngham*,[1] which illustrates a weak side of medieval reporting. The story is somewhat elaborate. Robert brings a writ of entry against John son of Agnes, demanding certain tenements as those into which the tenant had no entry save by (*per*) John Eustas, who thereof unjustly disseised Roger, the demandant's brother, whose heir the demandant is. The tenant makes default after default. Thereupon one Simon intervenes and prays to be 'received.' Simon produces a deed which shows that one Thomas, who, he says, was seised in fee, gave the tenements to the tenant in the action for his life, and granted that after his (the tenant's) death the tenements should 'descend' to a certain Mary for her life, and that after her death they should 'descend' to another Mary, her heirs and assigns. Simon adds that the two Maries are dead, and that he is brother and heir of the second Mary. So he asserts that the tenant in the action is merely a tenant for life, and he prays to be 'received' as being the person to whom the tenements ought to come upon the tenant's death. The demandant opposed Simon's reception. Now, supposing that good remainders were created in favour of the two Maries, a question of general principle was raised. The various reports, three in number, show that it was a question about which there was much to be said, and that the Court was not very willing to decide it. It was this: When a writ of entry is brought 'within the degrees,' can we suffer the intervention of a third party who stands outside the degrees? In this case the intervener does not claim through any of the persons named in the writ; he does not claim through Roger, the supposed disseisee, or through John Eustas, the supposed disseisor. When, however, this discussion has been proceeding for some time, it occurs to someone that there is a serious flaw in Simon's own case. What about those two remainders, if remainders they are? The deed says that after the death of a tenant for life the land is to 'descend' to Mary to hold for her life, and that on this Mary's death it is to 'descend' to another Mary. This use of 'descend' instead of 'remain' is evidently a bad fault. Our reports show that the chief justice was, to say the least, inclined to treat it as a fatal fault, despite an argument that the

[1] See below, p. 50.

donor's intention was plain and should prevail, though it was not well expressed. The record shows that the intervener, Simon, withdrew, and that the demandant recovered the land. Now with such a story before him a reporter is tempted to simplify the facts. In one of our reports this has been done not unskilfully. One 'John' intervenes, alleging a grant to the tenant in the action for his life, and such that after his death the land should 'descend' to the intervener and his heirs: in other words, we strike out one of these 'remainders,' if such they may be called, and make the intervener an original remainderman instead of being the heir of an original remainderman. Enough is left to serve as an explanation of the debate. But there are books whose conduct is much worse. In particular, we will notice *B*, the Maynard MS. No one ought to pretend that he can understand the case as it stands in the old edition,[1] and the fault in this instance is not the editor's. The intervener's case (he is here called 'Richard') is put before us thus: One 'Jordan' was seised and gave the tenements to one 'Jordan' for life, and after his death they were to remain (*demorrassent*) to the tenant in the action for his life, and after his death they were to remain (*demoergent*) to the intervener and his heirs. There is not one syllable about 'descending,' until suddenly near the end of the case the chief justice begins to make remarks which would have been pointless if the word 'descend' had not been used. And it is not with a mere slip of the pen that we have here to deal. Other books show a gradual process of deterioration. Apparently some reporter had represented the intervener's counsel as claiming that the lands were to 'remain' to his client and then producing a deed that said 'descend,' and then transcribers, desirous of brevity, omitted the statement of the deed, and so left the subsequent remarks of the chief justice floating in the air. To this we must add that this version of the case ends with the statement that in the end the parties made accord: a statement that we cannot reconcile with the roll, which shows us that the intervener withdrew and that the demandant recovered. Then another book (*R*), which states some particulars of the story with exceptional accuracy, speaks as if the remainders to the two Maries had been regularly created, but then it contents itself with a report of that part of the debate which dealt with the general question touching the receipt of an intervener who was outside the degrees. This procedure may well have been legitimate, though, as we all know, the reporter who endeavours to exclude one element from a case undertakes a

[1] Old edition, p. 64.

perilous task.—But perhaps we have already discussed too many examples and ought to apologize for our prolixity.

To speak frankly—and that an editor should speak frankly about such a matter seems desirable—we do not hope to make good sense of all the reports that we publish and shall not always feel ashamed when we fail. Comparison of the manuscripts among themselves and with the record shows, so it seems to us, that in the fourteenth century, as in the seventeenth, some bad versions of cases got abroad, and it is to be remembered that the worse the report, the smaller is our chance of finding the corresponding record. If we have been able, for example, to suggest the true explanation of the obscure case concerning the 'receipt' of a married woman which has lately been before us,[1] we have been more fortunate than we can expect to be upon all similar occasions, for at first sight there seemed to be little enough resemblance between the record and the reports. On the whole we hope that we shall not print much that is unintelligible; but as regards some of the short cases in which no proper names occur, we cannot always be certain that if we do not make them sensible, that must be our fault.

One negative result of some little importance will, so we think, have emerged in the course of the long discussion that we must now bring to an end. That these reports were in any sense official we cannot believe. It would not easily be possible to imagine anything less like the transmission of a publicly authenticated text than the state of affairs that is revealed to us by these manuscripts. Also it will have become apparent that, to put it bluntly, we ought not to trust the medieval reporter much further than we can see him.[2]

Have we, then, been industriously engaged in decrying our own wares, especially when we suggested, as we felt bound to suggest, that these ancient Law Reports have about them a strong dash of the law student's private note-book? We think not. It is true that, if at the present day they were often brought into court, an examination of manuscripts, such as that on which we have been engaged, might tend to diminish the amount of 'authority' that would be ascribed to them. As a matter of fact, however, the citation of a Year Book is now a rare event, and, so far as we have observed, when it occurs, no excessive degree of credence is paid to the cited text. On the

[1] See above, p. lxxxviii.

[2] When in our vol. i. p. xii. we expressed a doubt as to the existence of official reporters, we ought to have given a reference to what had already been said by Mr. Pike in Y.B. 12–13 Edw. III. p. xxiii. We regret the omission.

other hand, a diligent but cautious perusal of these precedent books of the apprentices at law is likely to shed desirable light on the thoughts and sayings and doings of a class of men who played a part in English history that is by no means insignificant. At all events, let us admire their industry. In a single year they contrived to take notes of some two hundred cases, and if not all of the men who compiled these books were heaven-born jurists, they were not the less human on that account, and their notes and their queries, their mistakes and their perplexities, may teach us more of English law and English life than we could learn from polished treatises.

We had hoped that this third volume would have brought us to the end of the third year of the reign. It has not done so. Some twenty cases we are compelled to reserve. For them room might have been found had this Introduction been shortened; but it did not seem to us desirable that we should continue to issue these reports without saying anything about their merits or giving our readers an opportunity of accepting or rejecting such estimate as we have been able to form. If history is to be written out of the Year Books—and that very good and interesting history will some day be won from them we do not doubt—it is of importance that we should assign a just value to our material, and as a step—not a very long step—in a right direction this essay 'prays to be received.' [1]

[1] In our translation we are using the square brackets as a request to our readers to look at the opposite page. This sign means sometimes that we are expanding an *etc.*; sometimes that we are making a small but, as it seems, necessary amendment; sometimes that we are preferring a variant to the text; sometimes that we are trying to give the upshot of a phrase which, if taken literally, is obscure. We hope that this device will be thought sufficient, for we would not increase the number of our footnotes. In transcribing the French text we have occasionally changed *ces* when it means *his, her, their* into *ses* without giving notice of the change. We regret having done so. We had hoped to explain exactly how much we omit when we make a 'Note from the Record.' But this may be done in another volume.

LEGAL CALENDAR

FOR THE

THIRD YEAR OF KING EDWARD II.

The third year of the reign began on 8 July, 1309. The Sunday letter was E in 1309 and D in 1310. In 1310 Easter fell on 19 April.

Justices of the King's Bench.

Roger le Brabazon, C.J.; Gilbert de Roubery; Henry Spigurnel.

Justices of the Common Bench.

William de Bereford, C.J.; Lambert de Trykyngham; Hervey de Stanton; Henry le Scrop; John de Benstede; William de Bourne.[1]

Names of Counsel who are mentioned in Vols. II. and III.

Assheley, Robert de
Cambridge (Cantebr'), John de
Claver (Clauer), John le
Denom, John de
Denom, William de
Eboraco, *see* York
Escrop, *see* Scrop
Friskeney, Walter de
Hampton, Richard de
Hedon, Robert de
Herle, William de
Hertipol, Geoffrey de
Huntingdon, Ralph de
Ingham, John de
Kingeshemede, Adam de
Kingeshemede, Simon de
Laufare, Nicholas de
Malberthorpe, Robert de
Miggele, William de
Passelew (Passeley), Edmund de
Ruston, William de
Scrop, Geoffrey le
Scoter (or Scotre), Roger
Toutheby, Gilbert de
Westcote, John de
Willughby, Richard de
York (Eboraco), John de [2]

[1] See Calendar of Close Rolls, 1307–1313, p. 231; writ of 18 September, 1309. William de Herle and William Inge occasionally appear as justices of assize. See below, pp. 157, 158, 187, 188.

[2] All the above names have been found on the rolls as those of 'narratores' who levy fines. There are, it will be noted, two Kingeshemedes and two Denoms. The form 'Denom' seems to be correct, though one Year Book habitually gives the more plausible 'Denham.' On a few occasions the name of Warwick appears; see p. 136; but we are not sure that Nicholas of Warwick was still in practice.

THE YEAR BOOKS OF EDWARD II.

VOL. III.

THIRD YEAR (*continued*)

PLACITA DE TERMINO S. HILLARII ANNO REGNI REGIS EDWARDI FILII REGIS EDWARDI TERCIO.

15a. FERRERS *v.* VESCY.[1]

Reverti, ou piert qe dreit de reversioun passe mye par grant de tenaunt en fee taile, si noun pur soun temps. Respice et quere de placito.

Forme de doun en le revertir, ou le issue en la taile fut devié saunz issue et avoit graunté la reversioun de mesmes les tenemenz a un, par quel graunt la femme tenaunte en dower s'attourna; et mesme cele femme fit defaute après defaute, par qei vint cely a qy le graunt se fit et pria d'estre receu.

Johan de Freres[2] porta le bref de fourme de doun en le *reverti* vers Clemence qe fust la femme W. de Vessy,[3] et demaunda le manier de L., par la resoun qe W. de Freres soun ael, qi heir il est, dona mesme le manier a Johan de Vessy et a Agnes sa femme et a les heirs de lour ij. corps issauntz,[4] et le quel après la mort J. et Agnes et W. fitz et heir mesme ceaux J. et A. a luy deit revertir etc.[5] Clemence fist defaute après[6] defaute. Pur qei un William de Vessy fitz W. de Vessy de Kildare survynt et dit qe un William le fitz Johan de Vessy luy graunta la reversioun de mesme le manier après la mort Clemence, par quele graunt ele se atourna etc. Et mist avaunt fait qe ceo testmoigna, et pria d'estre receu etc.

Denom. Nous n'entendomps mye qe par le graunt W. par my la defaute devet[7] estre receu, et par la resoun qe W. vostre feffour n'avoit estat si noun a terme de vie[8] en fee taillé, issint qu'il ne pout plus avaunt graunter qe la taille ne fust, scil. pur soun temps. Juge-

[1] This first version of the case from *A*: compared with *D*, *Q*. Headnotes from *A* and *Q*. [2] Ferers *Q*; Sire Johan de Ferers *D*. [3] Vesci *Q*. [4] engendrez et sil demorent etc. *Q*; engendrez et sil deviassent etc. *D*. [5] *Ins.* pur ceo qil deviast sanz heir de soun corps *Q*; *sim. D*, *but* qe J. devia. [6] *Om.* apres *A*. [7] William par nul defaute ne devetz *Q*; *sim. D*. [8] *Ins.* com *D*, *Q*.

PLEAS OF HILARY TERM IN THE THIRD YEAR OF KING EDWARD II. (A.D. 1310).

15A. FERRERS *v.* VESCY.[1]

Discussion of the effect of a reversionary grant in fee tail made by a tenant in tail. *A.* is tenant in tail with reversion to *X.* *A.* assigns dower to a woman (*B.*), and then professes to grant the reversion expectant on *B.*'s death to *C.* in fee tail, and *B.* attorns to *C.* *A.* dies without issue. Then *X.* brings formedon in the reverter against *B.*, who makes default. Is *C.* entitled to be received? Would there in such a case be any reversion (by wrong) in *C.* after *A.*'s death?

John de Ferrers brought his writ of formedon in the reverter against Clemencia sometime wife of William de Vescy and demanded the manor of L., for the reason that one W. de Ferrers his grandfather, whose heir he is, granted the manor to John de Vescy and Agnes his wife and the heirs of their two bodies issuing, so that after their deaths and the death of their son and heir William it should revert to [the demandant]. Clemencia made default after default. Wherefore one William de Vescy son of William de Vescy of Kildare intervened and said that William de Vescy son of John de Vescy granted to him the reversion of the manor on the death of Clemencia and that on that grant she attorned. And he put forward a deed which witnessed this, and he prayed to be received etc.

Denom. We do not think that by this grant you ought to be received on Clemencia's default; for your feoffor had only an estate for life in fee tail,[2] so that he could grant no more than what was tailed to him, namely [an estate] for his own time. We pray

[1] See our note from the record. In translating the reports of this case we leave the proper names as we find them.

[2] That is to say: he had fee tail, but, as he died without issue, he was in effect but tenant for life.

ment, si par le graunt celuy qe n'avoit qe fee taillé, par [1] quel graunt nulle dreit come de fee symple [2] vesty en vostre persone ne nul [3] reversioun ne poet estre par soun graunt a aultre [4] qe a lui mesme, et ceo pur soun temps, si vous devetz estre receu. Et [5] si vous fusset receu, ceo serroit contrarie a nostre actioun.

Herle. Coniset donqes qu'il avoit tiel estat et nous graunta etc. par quel graunt Clemence se attorna ; et pus poetz demaunder jugement de ceo qe [6] vous voletz,[7] qe vous ne poetz trier [8] nostre dreit einz ceo qe nous sumes parties.[9] Mès seoms primes receu, et pus dites ceo qe vous voletz.

Pass. Si vous fusset receu, ceo serroit apartement contrarie a nostre actioun, qar la revercioun n'ad regarde a nulli fors a luy en qi persone le dreit repose. Et nous sumes a demaunder le manier par resoun de reversioun et de affermer le dreit en nostre persone, et *per consequens* vous ne devet estre receu.

Berr. De qi [10] averoit Clemence eyde ou de Johan ou de William ? Jeo entente q'ele averoit plus tost eide de William qe de Johan. Et pur ceo q'ele n'ad rien si noun del dowement William soun baroun, a qi la revercioun append[roit] s'il fust en vie et survesquit la femme ; et la revercioun qe a luy appendoit [11] si ad il graunté a celuy William, par quel graunt ele est atorné ; et ceo dreit ne poet estre trié avaunt ceo qe vous eietz partie ; mès partie ne poetz avoir avaunt ceo q'il soit receu. Par qei il [12] semble q'il doit estre receu avaunt ceo qe vous pledetz rien [13] al estat William.

Pass. Si un tenaunt par la ley di Engleterre deviast et eust graunté la revercioun des tenemenz q'une femme tient en dower [14] a un aultre, par quele graunt ele se eust atourné,[15] si ele [16] fust enpledé et fist defaute etc., qe [17] serroit receu a defendre soun dreit, ou celuy a qi la revercioun appent de dreit, ou celuy a qi le graunt se fist par [18] le tenaunt par la ley di Engleterre ? Jeo entente celuy a qi la revercioun appent de dreit. Et c'est la resoun pur qei, purceo qe soun estat est si feble q'il ne poet plus avaunt graunter qe pur sa vie. Auxint de ceste part.

Herle. N'est pas semblable, qe tenaunt par la ley di Engleterre *quacunque via data* n'averoit [19] nul meen temps q'il [20] pout altre estat

[1] *Ins.* my *Q.* [2] *Ins.* se *Q.* [3] *Ins.* grant de *D.* [4] *Ins.* a aultre *Q*, *D* ; *om. A.* [5] qar *D.* [6] si *Q.* [7] End of speech *D.* [8] qar vous voilletz trier *Q.* [9] seoms partie a vous *Q.* [10] Ber. Si Clemence fut enplede de qi *D.* [11] *Om.* sil fust . . . appendoit *Q.* [12] moy *Q.* [13] vous poetz riens pleder *D.* [14] la reversioun ou femme tenaunt en dowere et il graunta la reversioun de soun dowere *Q* ; *sim. D*, *but* et ele, *not* et il. [15] se attorna *D*, *Q.* [16] sil ou ele *D*, *Q.* [17] qi *D*, *Q.* [18] pur *A.* [19] navovoit *A* ; navoit *D*, *Q.* [20] ou il *Q.*

judgment whether you ought to be received by virtue of the grant made by one who had only fee tail, and by whose grant no right as of fee simple vested in your person, and on whose grant there could be no reversion to anyone but to himself and that only for his own time. And if you were received, that would be contrary to our action.

Herle. Confess then that the grantor had such an estate and that he granted it to us and that Clemencia attorned; and then you can ask for judgment upon what you please; but you cannot try our right until we are party to the action. So first let us be received, and then you can say whatever you like.

Passeley. If you were to be received, that would be openly contrary to our action; for the reversion can belong only to the person in whom the right reposes. And we are here demanding the manor by reason of a reversion and affirming the right in our person, and consequently you ought not to be received.

Bereford, C.J. From whom would Clemencia have aid, from John [the demandant] or from William [the intervener]? I think she would sooner have aid from William than from John. And for this reason:—She has nothing but by the endowment of her husband, to whom the reversion would belong if he were alive and outlived her; and the reversion he [the husband's heir][1] has granted to William [the intervener], and upon that grant she has attorned; and that right cannot be tried until you have a party [to assert it], and a party you cannot have until [the intervener] is received. So it seems that he ought to be received before [the demandant] pleads anything about the estate of William.[2]

Passeley. If a tenant by the curtesy granted the reversion of the tenements held by a woman in dower,[3] and she attorned to the grantee, and then he [the grantor] died, then, if she were impleaded and made default, which of the two would be received to defend his right, he to whom the reversion belongs as of right or the grantee of the tenant by the curtesy? I say he to whom the reversion belongs as of right. And the reason is that the estate of the grantor [tenant by curtesy] is so feeble that he can make no grant for more than his life. So in this case.

Herle. Not a similar case. Tenant by the curtesy *quacunque via data* has no mean time in which he may have another

[1] Apparently so; but, if so, there is a sudden change in the grammatical subject.

[2] The tenant in tail and maker of the reversionary grant.

[3] A tenant by the curtesy has, we may suppose, assigned dower to his wife's mother.

avoir eu,[1] et *per consequens* par soun graunt rien ne pout[2] acrestre. Mès W. de Vessy se pout avoir demys avaunt la graunt et avoir repurchacé altre estat a luy et a ses heirs. Et issint pout il avoir eu fee symple, quel estat nous ne poums trier avaunt ceo qe nous seoms receu.

Denom. Si bref de dreit soit porté vers tenaunt a terme de vie, et il dit q'il n'ad rien en les tenemenz si noun a terme de vie, et prie eide de celuy a qi la revercioun appent, et le demaundaunt voille averer qe celuy de qi il prie aide rien avoit pus le temps etc. de qi etc., il n'avera mye l'aide einz ceo qe le pays passe. Nient plus par decea.

Pass.[3] Si un tenaunt a terme de vie lest soun estat a un aultre etc., et pus le tenaunt a terme de vie graunte la reversioun de mesme les tenemenz après la mort soun tenaunt a un homme et a les heires de soun corps engendretz,[4] par quele graunt il soit seisi, jeo crei qe plus tost serroit il receu a defendre soun dreit qe ne serroit celuy a qi la reversioun appent[5] de dreit, purceo qe ley suppose qe dreit demoert en sa persone taunqe soun estat soit defait. Mès ceo ne poet homme savoir avaunt ceo q'il soit receu, et pus poet il pleder soun estat. Auxi par decea, qar tot vousissoms prendre l'averement qe W. de Vessy avoit fee symple issint q'il pout graunt fair, si n'averoms partie, qar l'enfaunt ne serra mye partie einz ceo q'il soit receu.

Ing. Graunt de reversioun n'est pas choce maniable, einz est choce qe passe par my graunt. Dount si celuy qe n'ad mye power a graunter[6] graunte, par my ceo graunt nul dreit se vest. Et desicome William de Vessy n'avoit qe fee taillé, issint[7] par soun graunt[8] dreit ne pout estre defayt, il me semble qe l'enfaunt par nul graunt[9] a luy fait dreit en sa persone poet affermer.[10]

Herle. Vous voletz estraunger l'estat l'enfaunt del estat William, quel estat ne poet estre trié sauntz avoir partie. Le quel estat a defair girreit[11] naturelement après ceo qe l'enfaunt fust[12] receu.

[1] *Om.* eu *Q*. [2] *Ins.* a luy *Q*. [3] Ber. *D*, *Q*. [4] issauntz *Q*. [5] appendoit *Q*. [6] conustre *Q*; conustrer *D*. [7] *Ins.* qe *Q*, *D*. [8] *Ins.* aultri *Q*, *D*. [9] conis' *Q*; conissance *D*. [10] persone ne se put vestier *Q*; persone ne poet vestir *D*. [11] si gist *Q*. [12] *Om.* fust *A*.

estate,[1] and so by his grant nothing [more] can accrue [to his grantee]. But here [the grantor] might before the grant have demitted himself [from the estate tail] and have retaken an estate to himself and his heirs. And in that way he might have fee simple, and this [hypothetical] estate we could not try until after we had been received.

Denom. If a writ of right is brought against a tenant for life, and he says that he has nothing in the tenements except for term of life, and he prays aid of him to whom the reversion belongs, and the demandant wishes to aver that he whose aid is prayed had nothing since the time [of him upon whose seisin the demandant counted [2]], the tenant in the action would have no aid until after verdict of an inquest. No more in this case.

Passeley.[3] If a tenant for life [A.] leases his estate to another [B.], and then grants the reversion after the death of this tenant to a man [C.] and the heirs of his body begotten, and the grantee of this reversion [C.] is seised, I believe that if [B.] were impleaded, this grantee [C.] would be received to defend his right in preference to the person [X.] to whom the reversion belongs of right; for law supposes that the right remains in his [C.'s] person until it is defeated. But whether this right is defeasible cannot be known until he is received, and then he can plead his estate. So in this case. For if we wanted to take an averment that W. de Vescy [the grantor] had fee simple so that he could make a grant, we should have no party [to the issue], for the infant [4] cannot be a party until he has been received.

Ingham. A reversion is not a thing that can be handled, but it is a thing that passes by grant. So if one who has no power to grant, does grant, no right vests by the grant.[5] And since W. de Vescy had only fee tail, another's right cannot be defeated by his grant, and it seems to me that the infant [intervener] cannot affirm any right in his person by means of the grant.

Herle. You wish to estrange the estate of the infant from the estate of William de Vescy, which estate cannot be tried until there is a party [to try it]. When the infant has been received, then would be the natural time to defeat that estate.

[1] He has no chance of having more than an estate for life, whereas if a tenant in tail leaves issue his estate will endure.

[2] Following the analogous provision for counterpleading a voucher contained in Stat. Westm. I. c. 40.

[3] This is also ascribed to Bereford, C.J., and perhaps rightly. See the third report (*ad fin.*).

[4] We learn in this incidental way that the intervener is an infant.

[5] In other words, a grant is an innocent conveyance.

Toud. ad idem. Si nous ore pledomps al estat William avaunt ceo q'il soit receu,[1] quei dirroms donqes (*quasi diceret nichil*[2]) ?

15B. FERRERS *v.* VESCY.[3]

Johan de Ferers porta son bref de forme de doun en le *reverti* vers Clemence qe fut la femme William de Vessy du manier de Stapleforde. Clemence fit defaute après defaute. Vint William de Vessy de Kildare et dit qe la revercion a ly apent, par la reson qe W. le fitz W. de Vessy assigna ceu manier en dower a C., et pus granta la reversion de mesme le manier par ceu fet a W. de Vessy de Kildare, par quel grant C. se attorna. Issi apent le dreit a W. qe vynt avaunt jugement rendu et pria estre receu, etc.

Denum. Receu ne deit il estre, qe la ou W. dit qe W. fitz W. Vessy ly granta la reversion après la mort C. tenant en dower par son assignement, par quel grant C. se attorna, la dioms nous qe ceu manier fut en la seisine Robert de Ferers ; le quel Robert dona ceu manier a W. de Vessy et Agnes sa femme en francmariage. De W. et Agnes issit W. le fitz W. Vessy. Agnes devia. W. le piere prist autre femme C. tenant en dower. Après la mort W., W. son fitz assigna a C. en dower cel manier. Le quel W. le fitz W. de Vessy n'avoit estat forqe a terme de vie par la forme avantdite et est mort sanz heir de son corps engendré. Jugement, si par le fet cely qe n'avoit forqe terme de vie, pusse après sa mort estat de dreit clamer ou nul dreit defendre.

Fris. Vous veez bien coment nous avoms attaché le dreit de la revercion en nostre persone par le fet W. fitz W. de Vessy, et C. avoms attorné ; et il dit qe W. n'avoit qe[4] fee taillé, par qey ne pout estat fere, ou avaunt qe nous seoms receu a defendre nostre dreit nous ne pooms a ceo estre partie de trier l'estat W. le fitz W. Et statut veut ' si tenant a terme de vie ou en dower etc. le heir ou autre a qy etc. s'il vigne avant etc.' Et nous sumes prest etc. avant jugement rendu. Jugement, si nous ne devoms estre receu.

[1] *Ins.* et puis apres il serroit receu *D.* [2] diceret etc. *D, Q.* [3] This second version from *R.* [4] *Om.* qe *R.*

Toudeby on the same side. If we had to plead about the estate of William before we were received, what could we say [after we had been received]? Nothing.

15B. FERRERS *v.* VESCY.

John de Ferrers brought his writ of formedon in the reverter against Clemencia, sometime wife of William de Vescy, for the manor of Stapleford. She made default after default. William de Vescy of Kildare intervened and said that the reversion belongs to him, for the reason that William, son of William de Vescy, assigned this manor in dower to Clemencia and afterwards granted the reversion of the same manor by a deed (which is here) to William de Vescy of Kildare, upon which grant Clemencia attorned herself. Thus the right belongs to [the intervener] who comes before judgment rendered and prays to be received etc.

Denom. Received he ought not to be; for, whereas he tells you that William, son of William de Vescy, granted to him the reversion on the death of Clemencia, who was tenant in dower by his assignment, there we tell you that this manor was in the seisin of Robert de Ferrers, who gave it to William de Vescy and Agnes his wife in frankmarriage. Of them issued William, son of William de Vescy. Agnes died. William the father took another wife—namely, Clemencia, the tenant in dower. After his death William the son assigned this manor to Clemencia in dower. This William the son had but an estate for his life under the form [of the aforesaid gift]; and he is dead without an heir of his body begotten. Judgment, whether by virtue of the deed of one who had only for term of his life, you can claim or defend any estate or right after his death.

Friskeney. You see plainly how we have attached the right of the reversion in our person by the deed of William the son, and how Clemencia has attorned to us;[1] and he says that William had only a fee tail, whereby he could not make an estate. Now we cannot be party to try the estate of William the son of William until we have been received to defend our right. And the Statute[2] says 'if tenant for life or in dower [make default], the heir or other reversioner [is to be received] if he come before [judgment].' And here we are ready etc. before judgment rendered. Judgment, whether we ought not to be received.

[1] Or 'how we have attorned her to us.' [2] Stat. Westm. II. c. 3.

Pass. Posito qe le tenant par la ley d'Engleterre assigne a la miere sa femme dower, et pus grante la revercion a moi, et qe ele se atorne a moi. Pus le tenant par la ley etc. devie. La femme tenaunt en dower est enpledé et [1] fet defaute. Jeo ne serray pas receu, mesqe jeo vigne avant jugement etc. Ita hic.

Herle. Nent semblable, qe l'estat cely qe tient par la ley d'Engleterre est en certeyn. Par qey plus haut estat ne purra il fere ; mès la ou home tent en forme taillé, toux jours en sa vie est bien possible q'il pout avoir issue. Et ceo respons pooms nous doner qaunt nous sumes receu. Dount, desicum nous avoms mostré fet et vous ne mostrez rien forsqe vent, jugement.

Pass. Ne le voil averer ?

Herle. Qy serra partie ? Cely qe n'est pas receu ? Estre ceo, jeo pose qe W. qy fet nous mostroms avant fut en vye et pria estre receu, ne serreit il resceu ? Ou si C., q'ore fet defaute, ly vouchast ou priast eyde,[2] ne avereit ele eyde de ly ? Sertes sic !

Hervi. Vous estes ore en mesme l'estat come si la femme fut mort et J. entrast et vous portasset vostre bref [3] d'intrusioun vers ly. Convendreit qe vostre conisor avoit fee pure. Sic hic. Covent dire qe vostre conisor avoit fee pure issint q'il pout etc.

Scrop. Si nous ne seoms receu, grant duresse enseut ; qe mesqe issint fut q'il n'avoit qe fee taillé, comme nous ne grantoms poynt, uncore pout il doner et obliger ly et ses heirs a la garrantie. Dount, tot seit ceo issy qe nous seoms receu a defendre nostre dreit, vostre dreit ne vous decrest mye, par tant qe vous ne poet par cesti bref recoverer si dreit en eit, et nous averoms vers les heirs W. Mès si nous ne seoms receu etc. nous sumes osté de nostre dreit recoverer a toux jours. Par qey nous prioms etc.

Et sount ajornez a iij. simeignes de Pasche.

15c. FERRERS *v.* VESCY.[4]

Johan de Foreys [5] porta son bref de fourme de doun en le *reverti* vers une Clemente et demanda etc. La quele Clemente fit defaute après defaute issint qe les tenemenz furent a perdre.

Malb.[6] Sire nous dioms qe W. de Vescy assigna ceux tenemenz a Clemente en dowere. Le quel William après granta la reversion

[1] *Om.* et *R.* [2] *Ins.* et *R.* [3] *Om.* bref *R.* [4] *Vulg.* p. 62. This third version of the case from *M*: compared with *B*, *L*, *P*, *S*, *T*, *Y* (f. 107). [5] Fereis *B*; Ferers *L*; Fereys *P*; Freres *S*, *T*. [6] Malore *S*, *T*.

Passeley. Put case that a tenant by the curtesy assigns dower to his wife's mother and that he then grants the reversion to me, and that she attorns to me. Then he dies, and the doweress is impleaded and makes default. I shall not be received, albeit I come before judgment. So here.

Herle. Not a similar case. The estate of a tenant by the curtesy is limited in certainty, and so he can make no higher estate [than he has]. But when a man is tenant in tail, it is always possible throughout his life that he may have issue. And this is an answer that we might give after we had been received to defend. So to judgment, since we produce a deed, and you produce nothing but wind.

Passeley. Do you wish to aver your story?

Herle. Who is to be party to the averment? One who is not yet received? Besides, I put case that William whose deed we produce were alive and prayed to be received. Would not he be received? Or suppose that Clemencia, who makes default, vouched him or prayed aid of him. Would she not have aid of him? Certainly she would.

Stanton, J. You [the intervener] are here in the same position as if [the doweress] were dead, and John [the demandant] entered and you brought your writ of intrusion against him. It would behove [you] to show that [your] conusor had fee simple. So here. You [the intervener] must show that your conusor had fee simple so that he could [make you an estate].

Scrope. If we be not received, a great hardship follows. Suppose that [William the grantor] had—we do not admit it—only fee tail, still he could give and could bind himself and his heirs to warranty. So if we are received to defend our right, that will not decrease your right or prevent your recovering by this writ, if right you have, and then we shall have [our recovery over by way of warranty] against the heirs of [the grantor]. On the other hand, if we are not received, we are ousted for ever from recovering our right. Therefore we pray etc.

Adjourned to three weeks after Easter.

15c. FERRERS *v.* VESCY.

John de Ferrers brought his writ of formedon in the reverter against one Clemencia and demanded etc. She made default after default, so that the tenements were on the point of being lost.

Malberthorpe. Sir, we say that William de Vescy assigned these tenements to Clemencia in dower. Then he granted the reversion of

de mesmes les tenemenz a William[1] de Kildare; par quel grant Clemente s'attorna a William de Kildar, le quel fut seisi de sa fealté. Le quel[2] est en court et prie qe la defaute Clemente ne lui torne en prejudice, q'il ne pusse estre receu a defendre son dreit, com celui a qi la reversion de ceux tenemenz après la mort Clemente appent. (Et bota avant un escript qe tesmoigna qe William lui avoit granté la reversion.)

Denom. Nous portoms nostre bref de forme de doun en le *reverti*, et avoms dit qe nostre auncestre dona ceux tenemenz a W. de Vessi[3] et Agnes sa femme en franc mariage, et les queux après la mort W. et A.[4] a nous deivent revertir, pur ceo qe W. et A. devierent etc.[5] Et del hure qe W. de Vesci qe cest reversion a W. de Vescy de Kildare deust avoir granté n'avoit qe tenaunce[6] solonc la forme etc., qe ne pout charger forsqe[7] son temps, demandoms jugement si par reson de reversion granté par celui qe ne pout, a ceo dreit defendre[8] deive estre receu.

Ber. Tut soit il receu, par taunt n'est pas son dreit prové[9] ne vostre actioun[10] exteint.

West. Sire, avant q'il seit receu il covent q'il se face privé a la reversion. Mès a la reversion ne put il estre privé, s'il ne puse afermer tiel estat en la persone W. de Vecey q'il[11] peut la reversion granter. Et ceo ne put il fere, q'il n'avoit qe *ut supra* etc. Et demandoms jugement etc.[12]

Berr. Si William de Vescy fut en vie et A. sa femme fut mort sans issue etc.[13] et Clemente feisse defaute, auxi come ele fet ore, qi serreit receu?

Pass. Jeo entenk qe le donour.

Ber. C'est le plus qe afforce vostre dit qe W. est mort. Mès si celui qe n'ad forsqe franctenement eust aliené en fee, la fet il fee al feffé,[14] et a[15] tiel cas il serra garr[anti].[16]

J.[17] *Denom.* Si jeo le eusse osté[18] il serroit sanz rec[overer].

West. Le feffé en tiel manere put avoir estat, le quel se vest en sa persone par my le doun et la liveré de seisine;[19] mès[20] y n'ad nul

[1] W. de Vesci *B.* [2] *Ins.* Wyllyam *B*; *sim. L, Y.* [3] Vest *M.* [4] *Ins.* et J. fitz et heir W. et A. *L, Y.* [5] sanz heir de lour corps *B.* [6] taunt *M*; tenaunce *Al. Cod.* [7] sy noun en *B*; fors en *Y.* [8] dest' *M, P*; deffendre, *B, L.* [9] pas soun graunt prove ne soun dreit afferme *S, T.* [10] dreit *L.* [11] *Ins.* ne *Vulg.; expuncted in B.* [12] et ceo ne puyt il car il navoyt pas tiel estat *S, T.* [13] sauntz heir de sey *S, T.* [14] *Sic M, P, S, T*; aliene en fee le feffe *B*; ust aliene en fee a la feffe *L*; aliene en fee al feffe *Y.* [15] en *S, T, Y.* [16] garraunti (*in full*) *L*; r[eceu] *S, T.* [17] *Om.* J. *B, L, P, S, T.* [18] Mes si jeo luy voyssis outre *S*; *sim. T* (vousisse outre); Si J. le eust ouste *Y.* [19] *Om.* et . . . seisine *B, S, T.* [20] *Ins.* en ceo cas *Y.*

the same tenements to William of Kildare, and on that grant Clemencia attorned to William of Kildare, who was seised of her fealty. And he [William of Kildare] is in court and prays that her default may not turn to his prejudice, but that he be received to defend his right, as he to whom the reversion of these tenements belongs after the death of Clemencia. (And he produced a writing which witnessed the grant of the reversion.)

Denom. We bring our writ of formedon in the reverter, and we have said that our ancestor gave these tenements to William de Vescy and Agnes his wife in frankmarriage, and that after their deaths the tenements should revert to us because [there was a failure of issue]. And, since the William de Vescy who is said to have made the grant to William of Kildare had only a tenancy by the form of the gift etc., and could make no charge beyond his own time, we demand judgment whether by reason of a grant of a reversion made by one who had no such right [this intervener] should be received to defend that right.

Bereford, C.J. Suppose that he were received, that would not prove his right or extinguish your action.

Westcote. But before he is received he must make himself privy to the reversion. But privy to the reversion he cannot be unless he can affirm such an estate in William [the grantor] as would enable him to grant the reversion etc. And that he cannot do, for [his grantor] had but [a tenancy in tail] as above. We pray judgment.

Bereford, C.J. If William [the grantor] were alive, and A[gnes] his wife had died without issue,[1] and Clemencia were making default as now, who would be entitled to be received?

Passeley. I think the donor [of the estate tail].

Bereford, C.J. What makes most in favour of your contention is that William is dead. But, if one who has only a freehold alienates in fee, he makes a fee in his feoffee, and in such a case he [the feoffee] would get warranty.[2]

J. Denom. If the feoffee were ousted he would have no recovery.

Westcote. A man enfeoffed in that manner may have an estate which is vested in his person by means of the gift and the livery of

[1] This reporter (or else the Chief Justice) seems to suppose that William the grantor of the reversion was William the original donee in tail. This, however, was not the case. From the report of Denom's speech it would seem that some of the books which give this version of the debate attempt to simplify the facts.

[2] Or 'would be received.'

doun, mès un reversion granté, la quele ne put vestir si celui qe grante n'eit dreit. Et demandoms jugement etc.

Denom ad idem. Si le tenant [1] par la ley d'Engleterre eit assigné dowere a la miere sa femme,[2] et ele fut enpledé et fit defaute etc., le tenant par la ley d'Engleterre ne serreit pas receu. Nent plus ne devez vous etc.

Berr. De rien semblable, qe le tenant par la ley d' Engleterre ne purra [3] mye voucher, tut fut il receu etc.

Malb. Jeo entenk [4] q'il serroit en tiel cas receu etc.

Herle.[5] Il est possible [6] qe William de Vesci avoit tiel [7] estat par le doun vostre auncestre come vous supposez, et q'il aliena et reprist estat en fee,[8] quel estat il fut en continuaunt qaunt il assigna ceux tenemenz a Clemente en dower. Et desicom nous ne pooms estre partie a trier quel estat William avoit quant etc., avant qe nous seoms receu, jugement si nous ne devoms a nostre estat [9] defendre estre receu.

Denom. William de Vescy, de qi assignement Clemente tent, rien put en la reversion clamer sy noun en eyaunt regarde [10] a terme de sa vie etc. Et del hure qe William est mort, par qi mort nostre actioun est acru,[11] il nous semble qe son grant [12] est nule en sey. Et demandoms jugement si par tiel grant, q'est de nul value ne meyntenable par voye de [13] ley, encountre nostre action [14] de plus haut, devez estre receu [15] etc.

West. ad idem. Si W. de Vescy eust relessé et [16] quitclamé tut le dreit q'il avoit en la reversion en la seisine Clemence, et Johan Fereys q'ore port cestui breve eust entré après la mort Clemence [17] ja ne purra le heir Clemence counter de sa seisine com de fee et de dreit. Et depus qe le heir Clemencz ne purra dreit en sa persone affermer par le fet William fet a Clemence tenant [18] de [19] franctenement, n'entendoms mye qe vous par le fet W. estat de reversion en vostre persone pussez affermer.

Toud. Tut morust William etc. sanz heir de son corps, par tant ne morust il mye sanz heir,[20] qar il ad heir qe put gar[rantir] et fere a la value. Par qei grant duresse serroit si nous ne fussoms receu, qar autrement serroms barré de chescun manere de avantage.[21]

[1] *Ins.* a terme de vie ou *S, T.* [2] femme par plus eigne (*end of case*) *L.* [3] semblable qe le pere etc. ne pout *S, T.* [4] Jeo vous proefs *Y.* [5] Berr. *S, T.* [6] semblable *P.* [7] cel *B.* [8] *Ins.* simple *Y.* [9] droit *B, Y.* [10] *Om.* en . . . regarde *S, T.* [11] accion est acru a J. *Y.* [12] bref *M*; graunt *B, P, Y*; action *S, T.* [13] *Om.* par voye de *B, S, T.* [14] *Ins.* qest *S, T.* [15] respondue *S, T.* [16] ou *B.* [17] *Om.* et Johan . . . Clemence *M*; *supplied from B*; *sim. P, S, T, Y.* [18] taunt *S, T.* [19] del *B*; due *S, T*; du *Y.* [20] *Ins.* de saunk *S*; du saunk *T.* [21] serroms saunz recoverire *S, T.*

seisin. Here, however, there is no gift, but only a grant of a reversion, and that cannot vest unless the grantor has right.[1] We demand judgment etc.

Denom on the same side. If tenant by the curtesy has assigned dower to the mother of his wife and she is impleaded and makes default, the tenant by the curtesy shall not be received. And no more should you.

Bereford, C.J. That is not at all similar. A tenant by the curtesy could not vouch, even if he were received.

Malberthorpe. I think that in such a case he would be received.

Herle.[2] It is possible that William de Vescy had by the gift of your ancestor such an estate as you suppose, and then that he alienated and took back an estate in fee [simple], which estate he was continuing when he assigned the tenements to Clemencia in dower. And, since we cannot be a party to try what estate he had at that time until we are received, we pray judgment whether we ought not to be received to defend our right.

Denom. William, by whose assignment Clemencia held, could claim nothing in the reversion beyond the term of his life. And since he is dead, and by his death our action accrued, it seems to us that his grant is merely null. We pray judgment whether by virtue of such a grant, which is of no value and not to be maintained by law, you can be received against our action on a title which we lay higher up.

Westcote on the same side. If William had released and quitclaimed in Clemencia's seisin all the right that he had in the reversion, and the now demandant had entered after her death, her heir could not count on her seisin as of fee and of right. And, since Clemencia's heir would not be able to affirm a right in her person by virtue of a deed made to Clemencia, who had the freehold, we cannot think that you can affirm an estate in reversion in your person by William's grant.

Toudeby. Albeit William [our grantor] died without an heir of his body, still he did not die without an heir; for he has an heir who can warrant and give recompense. So it would be a great hardship if we were not received; for otherwise we should be excluded from every kind of advantage.

[1] In other words, a feoffment may have a tortious operation, a grant cannot.

[2] Some books give this speech to Bereford.

Pass. Nous avoms veu avant ces hures la ou Nichol de [1] Warr' granta la reversion de tenemenz qe furent donez a un homme et a sa femme en fee taillé après la mort sa [2] femme, qe morust sanz issue, issint qe la court entendi, qe par la mort le un [3] etc. la reversion fut de W. al donour.[4] Et desicom W., de qi vous clamez avoir estat, n'out qe franctenement solonc la forme, issint qe la reversion fut a nous de W.,[5] jugement etc.[6]

Toud. Si nous pledoms ore l'estat W. einz ceo q'il soit receu, après ceo qe nous seoms receu qei dirroms nous (*quasi diceret nichil*) ?

Ber. ad idem. Si nous vousissoms prendre enquest a enquerre quel estat W. avoit, nous n'averoms pas partie a ceo, qe l'enfaunt [7] ne put estre partie einz ceo q'il seit receu.[8]

{Ad [9] alium diem *Westcote.* S'il fust r[eceu] a defendre etc, ceo serroit contrarie a nostre accion qar issi suppos[ereit] qe W. eust fee simple etc.

Spig. De deus meschiefs le meindre fet a eslire. Mès meindre meschief est, del houre q'il met avant fet qe tesmoigne qe W. de Vescy lui granta la reversion de ceux tenemenz qe Clemence tient en dowere, par queu grant ele se atturna a W. de Kyldare, q'il soit ore resceu a defendre sun dreit et meintenant a r[espondre] a vostre accion, qe vous a rescoverir par la defaute Clemence ceo qe W. de Vescy lui ad granté, e issi qil perdreit sun voucher vers les heirs W. de Vescy, et issi par vostre [10] rescoverir il estre chacé a novele suite, qe serroit inconvenient de ley.

Westcote. Ou et quant et devant qi se attorna Clemence ?

Touth. A Maltone en la conté de Everwyk, en la prioré de Maltone, en la presence W. de Vescy et altres plussours.

Westcote. Qe W. de Vescy, par qi mort nous demandoms ceux tenemenz par la forme etc., morust seisi de ceux tenemenz issi qe ceux tenemenz ne furent unkes assignez a Clemence, par quel assignement ele se duist attourner : et prest del averer.

Ber. a Touth. Ceo est un r[espouns] a defere quancqe vous avez dist et desaffermer vostre dreit de estre receu.

Touth. Q'il ne morust nent seisi, mès q'il assigna et Clemence se atturna : prest etc.

[1] *Ins.* la *Y.* [2] la *S, T, Y.* [3] mort del un *B.* [4] fuist al donour *B*; fut de W. al donour *M*; fut de W. a donour *P*; fust due al donour *Y*; mort la femme la reversioun fut due a donour *S, T*; *corr.* fut devenu (?). [5] *Om.* de W. *B, P*; *ins. M, P*; fust a nous due *Y.* [6] End of case, *B. Ins.* et sic pendet (*end of case*) *S, T.* [7] lestraunge *P.* [8] *Ins.* etc. pur ceo qil pout vocher *P.* [9] From *Y.* [10] *Or* nostre.

Passeley. We have seen before now that Nicholas of Warwick[1] granted the reversion of tenements that were given to a man and his wife in fee tail when the wife was dead without issue, where the Court understood that by the death of one of the two [without issue] the reversion had come to the donor.[2] And since William, from whom you have your estate, had only a freehold by the form of the gift, so that the reversion was in us, we pray judgment.

Toudeby. If we now plead about William's estate before we are received, what could we say after we were received? Why, nothing.

Bereford, C.J. If we wished to take an inquest to inquire what estate William had, we should not have a party to it, for the infant [intervener][3] could not be a party until he is received.

{At[4] another day *Westcote.* If he were received to defend [his right], that would be contrary to our action, for it would suppose that W. de Vescy had a fee simple.

Spigurnel, J.[5] Of two mischiefs the less should be chosen. But, since he [Kildare] produces a deed which witnesses that W. de Vescy granted to him the reversion of the tenements which Clemencia held in dower, and on this grant she attorned to him, it is a less mischief that he should be received to defend his right and at once give answer to your action than that you should recover upon Clemencia's default that which Vescy granted to [Kildare], so that [Kildare] would lose his voucher of Vescy's heir, and so by your recovery [Kildare] would be driven to a new suit, which would be an absurdity in law.

Westcote. Where, when, and before whom did Clemencia attorn?

Toudeby. At Malton, in Yorkshire, in the priory of Malton, before W. de Vescy and divers others.

Westcote. W. de Vescy, upon whose death we demand these tenements by the form [of the gift], died seised thereof, so that they were never assigned to Clemencia in such wise that she ought to attorn. Ready to aver.

Bereford, C.J., to *Toudeby.* That is an answer which goes to defeat all that you have said and to disaffirm your right to be received.

Toudeby. He did not die seised, but he assigned and Clemencia attorned. Ready etc.

Issue joined.

[1] Apparently the serjeant of that name, and the reference is to some fine that he had passed.

[2] The text is somewhat uncertain.

[3] Or perhaps 'the stranger.'

[4] One book, omitting the last two speeches, gives the following end of the case. On the whole it is well supported by the record.

[5] A judge of the King's Bench. His assistance in a difficult case may have been obtained.

E pus W. de Vescy de Kildare trova meinpernours a r[espondre] des issues pur le mien temps par forme de statut. Et sun gardein fust resceu, nient resteant q'il ne fust resceu a defendre sun droit.}

Note from the Record.

De Banco Roll, Hilary, 3 Edw II. (No. 180), r. 116, Leic.

John son of Robert de Ferariis, by John Herberd his attorney, offers himself on the fourth day against Clemencia, sometime wife of John son of William de Vescy, of a plea touching the manor of Stapelforde (except certain tenements) which he claims as his right.

And she does not come and heretofore made default.[1] And hereupon comes one William de Vescy de Kildare and says that his father, one William de Vescy, was at one time seised of the manor, and afterwards assigned it to Clemencia, to hold by way of dower, and afterwards granted the reversion thereof after Clemencia's death to [the intervener] and the heirs of his body lawfully begotten; and that, by reason of this grant, Clemencia attorned herself for her said dower to [the intervener] and did him fealty therefor; wherefore he says that the right and reversion of the manor belong to him in form aforesaid, and he prays that Clemencia's default be not prejudicial to him, but that he be received to defend in this behalf. And he produces a charter under the name of William de Vescy his father which witnesses the said grant and the attornment of Clemencia as aforesaid.

[The demandant] says that he demands the manor against Clemencia as his right by the King's writ, whereof the form is this: 'which [manor] William de Ferariis, the demandant's grandfather, whose heir he is, gave to William de Vescy in frank marriage with Agnes, daughter of the said William de Ferariis, and which after the death of them and of William their son and heir ought to revert to [the demandant] by the form of the said gift, for that William son and heir of William de Vescy and Agnes died without an heir of his body issuing.' And [the demandant] says that after the death of William de Vescy and Agnes, William de Vescy [their] son had nothing in the manor but a fee tail (*talliatum*) by the form aforesaid, so that at once on his death, as he died without an heir of his body (*de se*), the right and reversion belonged to [the demandant] as to the heir of the donor, and an action accrued to [the demandant] according to the form of his writ to demand the manor. Wherefore he says that by any assignment made by William de Vescy to Clemencia, to hold by way of dower, or by the grant afterwards made by William de Vescy to [the intervener] concerning the reversion of the said dower, no prejudice ought to occur to [the demandant] as heir of the donor and no right of reversion can accrue to [the intervener], especially as the estate which William son of William de Vescy had in the manor totally expired upon his death. And he further says that

[1] Further particulars of her defaults are given.

Afterwards W. de Vescy of Kildare found mainpernors to answer for the issues in the mesne time according to the form of the Statute.[1] And his guardian was received [to try the above question], though he had not been received to defend his right.}

Note from the Record (*continued*).

if he were compelled to receive [the intervener] in this behalf by any deed of William son of William de Vescy supposing him, William, to have had the right and fee simple, this would be prejudicial and preclusive to [the demandant's] action, which is competent to him by the form of the said gift. Wherefore he says that [the intervener] ought not to be received so as to defer [the demandant's] acquisition of seisin upon the default of Clemencia. And he demands that his seisin be adjudged to him upon the default of Clemencia.

A day is given them to hear their judgment on Easter three weeks in the same state as now.

Afterwards at that day [the demandant] by his attorney and [the intervener] come, and a day is given them to hear their judgment on the octave of St. John Baptist in the same state as now.

Afterwards at that day [the demandant] comes and, as before, demands judgment on Clemencia's default. And [the intervener] comes and prays to be received to defend his right by reason of the reversion belonging to him as aforesaid.

And [the demandant] says that whereas [the intervener] claims the reversion by the grant of William de Vescy and the attornment of Clemencia, the said William de Vescy died seised of the manor, without this (*absque hoc*) that Clemencia had any seisin thereof in his life by any assignment of his; and this he is ready to aver, and he demands judgment.

And [the intervener] says that Clemencia was seised of the manor by way of dower by the said assignment; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of St. Martin. And [the intervener] finds security to answer to [the demandant] from the said quindene of Hilary to the day when the jury shall pass (*transiret*) between them, in case that jury shall pass against [the intervener]: to wit, Gilbert de Toutheby, William de Rostone, William de Vescy de Neusom, Geoffrey de Gippesmere, John de Kirkeby in Rydale and Richard de Plaiz of the county of York, all of whom undertake for him in manner aforesaid. And it is conceded by the Justices that Andrew de Rygge or Richard de Plaiz do sue on behalf of (*pro*) [the intervener], who is under age, against [the demandant] in the plea aforesaid.

The record does not explain who Clemencia is. Our second report would make her the second wife of the William de Vescy who had previously married Agnes de Ferrers, and who was the original donee in special tail. But the record makes Clemencia the wife of a John de Vescy. See our Introduction, p. lxxxi.

[1] Stat. 20 Edw. I. de defensione iuris (Statutes of the Realm, vol. i. p. 110).

16A. WOKESEYE *v.* CHISELDEN.[1]

Entré vers tenaunt par resoun del alienacioun le tenaunt en dower, ou il conust l'entré par ly ; et receu d'averer dreit de revercioun en estraunge a qy il fust mye privé devaunt l'alienacioun.

Un Stephene porta soun bref d'entré vers un tenaunt, et dit en les queux il n'ad entré sy noun par A. qe ceaux tenemenz teint[2] en dower.

Pass. Sire, nous conissoms bien qe nous sumes entré par A., mès nous vous dioms qe[3] L. a qi la reversioun appendoit graunta mesme la reversioun a un P., par quele graunt A. se attorna longe temps avaunt ceo q'ele[4] nous enfeffa. Jugement, si[5] actioun pooetz avoir.[6]

Ros. Et nous jugement, depus qe vous avet conu l'entré par cele qe n'avoit qe dower, ou ley suppose qe l'alienacioun ne nous serra bare, et vous n'estes pryvé a celuy P. a qi la conisaunce fust faite etc., et vous ne moustretz rien qe testmoigne le graunt estre fait a P. Jugement, si encountre vostre conisaunce, la quel est nostre actioun, a nul averement devetz avenir.

Berr. N'est il[7] pas privé qaunt il est tenaunt des tenemenz ? Et d'aultrepart si ceo fust en l'assise de novele diseisine ou derrein presentement vostre respouns tochereit l'actioun. Par qei si vous voletz la demorrer, demorretz et vous averez vostre jugement.

Roston.[8] La ou ele dit q'ele tient de P. en dowere le jour del alienacioun fait par la conisaunce etc. vous dioms q'ele tient en dower de nous le jour del alienacioun fait. Prest etc.

Et alii econtra.[9]

16B. WOKESEYE *v.* CHISELDEN.[10]

R. Buskesley porta son bref d'entré vers R. de C. de certeinz tenemenz en C., et dit en les quex il n'avoit entré si noun par W. Serekin et Isabel sa femme qe ceux tindrent en noun de dower Isabel de son heritage, et les quex après la mort Isabel a ly deyvent retorner.

Pass. Nous grantoms bien l'entré par W. et Isabel sa femme, et

[1] Text from *A* : compared with *D*, *Q*. [2] *Ins.* de nous *D*, *Q*. [3] qi *A*. [4] qil *Q*. [5] *Ins.* vous a ore *D*. [6] *Ins.* Roistone. Vous dites qe L. graunta a P. la reversioun. Qei avez de ceo ? Pass. Prest etc. *Q*. [7] Ber. Il nest *D*, *Q*. [8] *Ins.* ne voilleit mye demorer mes dist. *Q*. ; *sim. D*. [9] *Ins.* Ideo ad etc. *Q*. [10] This second version from *R*.

16A. WOKESEYE *v.* CHISELDEN.[1]

In a writ of entry on alienation by a doweress, the tenant, admitting the entry, is allowed to aver that before the alienation the reversion had been conveyed to a third person, though no specialty is produced.

One [Richard] brought his writ of entry against a tenant saying 'into which he has no entry save by (*per*) A., who held these tenements [of us] in dower.'

Passeley. Sir, we fully admit that we entered by A.; but we tell you that L. to whom the reversion belonged, granted it to one P., and that upon that grant A. attorned a long time before she enfeoffed us. Judgment, whether you can have an action.

Roston. And we on our side pray judgment, since you have confessed the entry by one who had no more than dower, and in this case the law supposes that the alienation is no bar to us, and you are not privy to this P. to whom the conusance[2] was made, and you show nothing which witnesses the grant to P. Judgment, whether against your own confession, which accords with our action, you can get to this averment.

Bereford, C.J. But is he not privy when he is tenant of the tenements? On the other hand, if this were in an assize of novel disseisin or of darein presentment your answer would touch the action. Therefore, if you wish to demur there, demur, and you shall have your judgment.

Roston. Whereas [he] says that on the day of the alienation [the doweress] held in dower of P. by the conusance etc., we say that on that day she held in dower of us. Ready etc.

Issue joined.

16B. WOKESEYE *v.* CHISELDEN.

R. [Wokeseye] brought his writ of entry against R. de C. for certain tenements in C. and said 'into which he had no entry, save by W. [Jukyn] and Isabel his wife, who held these tenements as the dower of Isabel of [the demandant's] inheritance, and which after Isabel's death should return to him.'

Passeley. We freely grant the entry by W. and Isabel; but we

[1] Proper names from the record.

[2] From this we should gather that the supposed conveyance of the reversion was by fine. In the second report there is no talk of a conusance; and the record speaks of a grant.

vous dioms qe mesme cesti R. qe ore porte cesti bref granta la revercion de mesme ceux tenemenz a R. Steyn, par quel grant la femme se atorna. Jugement, si actioun pussez avoir.

Roustone. Qey avez de ceo?

Lauf. Prist etc. si vous voillez dedire.

Hedon. Vous veet bien q'il ne mostre rienz a la court qe testimoigne son dit, ne il ne se fet privé par fet ne comme heir du sank a cesti a qy il dit qe le grant se fit. Et demandoms jugement si sanz especialté deyve a nul averement avenir. D'autrepart, il est tot estrange a nous [1] et a R. Steyne; a pleder donqes ove nous a cele costé auxi comme privie n'avendra il mye.

Berr. Il est tot privé a la terre, et il vous dit qe vous grantastes la reversion a R. Steyne, par qel grant Isabel se attorna, issint qe vostre actioun est esteynt, et il est tenant de la terre. Par qey ne deit il estre receu a pleder pur esteyndre vostre actioun?

Rostone. Pur ceo q'il ne se fet pas privé a nous par fealté [2] n'en nul autre manere com heir R. Steyne,[3] demandoms jugement si sanz especialté etc.

Berr. Volez demorer la?

Hervi. Il vous dient qe la femme ne tynt mye en noun de dower de vous ne lunge temps avant qe le lees se fit a ly; mès il grante bien q'il entra par W. et Isabel sa femme jour du lees fet.

Pass. Ceo voloms averer.

Rostone. Il nous semble qe sans fet a cele costé ne put il pleder.

Berr. Si nous agardasoms q'il fusset a cele costé sanz mostre fet, qey vodrez vous pleder?

Rostone. Nous dirroms asset.

Berr. Responez si vous volez. Si noun, vous averez vos jugements meyntenant.

Hodone. Qe le baron et la femme tyndrent de nous le jour q'ils lesserent ceux tenemenz a R. Prist etc.

Pass. Qu'ex tyndrent ceux tenemenz de R. Steyne par r[eson] de contrat avantdit et nent de vous. Prist etc.

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 246d, Wilts.

Richard, son of Richard de Wokeseye, by his attorney, demands against Richard de Chiselden two messuages and two virgates of land in Chiselden as his right and inheritance, and into which [the tenant] has not entry

[1] Doubtful *R.* [2] *Corr.* par fet (?). [3] *Ins.* et *R.*

tell you that the present demandant granted the reversion of these tenements to one R. Steyn, upon which grant the woman attorned. Judgment, whether you can have an action.

Ruston. What have you for that ?

Laufer. Ready [to aver] if you will deny it.

Hedon. You see how he shows nothing to the Court to witness what he says, and he does not make himself privy by deed or as heir by blood to the supposed grantee. We pray judgment whether he can get to any averment without specialty. Besides, he is a total stranger to us and to R. Steyn, so he cannot get to plead with us on this side as though he were privy.

Bereford, C.J. But he is privy enough to the land. And he tells you that you granted the reversion to R. Steyn, and that on this grant Isabel attorned, so that your action is extinguished. He is tenant of the land, and why should he not be received to extinguish your action by his plea ?

Ruston. Because he does not make himself privy to us by fealty [1] or as the heir of R. Steyn, we demand judgment whether without specialty etc.

Bereford, C.J. Will you demur there ?

Stanton, J. They tell you that the woman did not hold in dower of you some time before the lease was made to him [the tenant], though they admit that he did enter by W. and Isabel on the day on which the lease was made.

Passeley. Yes, that we will aver.

Ruston. It seems to us that without a deed he cannot plead to that point.

Bereford, C.J. If we were to adjudge that he could get to that point without producing a deed, what would you plead ?

Ruston. We should have enough to say.

Bereford, J. Then be pleased to answer. Otherwise you shall have your judgments at once.

Hedon. The husband and [the doweress] held of us on the day they leased these tenements to [the tenant]. Ready etc.

Passeley. They held them of R. Steyn by reason of the aforesaid contract, and not of you. Ready etc.

Note from the Record (*continued*).

except by (*per*) Walter Jukyn and Isabella his wife, who demised them to him, [and] who held them as of the dower of Isabella by the gift of Richard de Wokeseye, sometime her husband, father of [the demandant],

[1] Or more probably 'by deed.'

Note from the Record (*continued*).

whose heir [the demandant] is, and which after the death of Isabella ought to revert to [the demandant].

[The tenant], by his attorney, after formal defence, fully confesses that he has entry into the tenement by Walter and Isabella; but he says that this ought not to prejudice him; for he says that [the demandant], long before Walter and Isabella demised the tenements to [the tenant], enfeoffed one Roger Styne[1] of two parts of the tenements whereof Isabella held the third part in dower and granted the reversion of the tenements now in demand after Isabella's death to the same Roger Styne, upon which grant Walter and Isabella attorned etc.; wherefore he says that, at the time of the said demise made by Walter and Isabella to [the tenant], the said

17A. FRESSINGFELD *v.* COOKLEY (PARSON OF).[2]

Quare impedit porté d'un vicarie, ou il dit q'il fust presenté a l'eglise entier et la vicarie nent severé, et pria eide etc., et non habuit.

Johan de Frissingfelde[3] porta soun *quare impedit* vers L. persone del eglise de T., et dit q'a tort etc.[4] a la vicar[ie] de T., et par la resoun qe un W.[5] fust seisi du manier etc. de[6] qi l'avowesoun de la vicarie fust appendaunt,[7] qi en soun temps presenta un Estevene etc. qe a soun presentement etc. Le quel W. graunta le manier a un Johan. Le qel Johan graunta le manier a nous par fin etc. et issint appent etc.[8]

Herle. Vous portetz ceo bref vers nous come vers persone de l'eglise de T. Nous vous dioms qe nous trovames nostre eglise seisi del entier le jour del presentement, et nous[9] presenté al eglise entier, saunt ceo qe la vicarie fust severé en nostre temps ou[10] en le temps nostre predecessour persone de mesme la eglise; et nous ne poums estre partie a pleder nul rien q'est[11] en debat de la eglise sauntz[12] l'evesqe et le patron. Et prioms eide d'eaux.

Toud. Nous portoms nostre bref vers vous com vers destorbour, et avoms dit qe W., qi estat nous avoms, presenta a la vicaré severalment, et vous ne poetz mye dire qe vous estes presenté a la vicarie. Par qei nous demaundoms jugement si eide etc.

Herle. Par taunt ne poetz mye[13] tort en nostre persone affermer, qe nous trovames nostre eglise seisi de la vikarie com annexé etc., et

[1] Or 'Styue.' [2] Text of this first version from *A*: compared with *D*, *Q*. Headnote from *A*. [3] Frysingfelde *Q*. [4] a tort lui desturbe etc. et pas ne lui soeffre presenter *D*. [5] Will. *D*, *Q*. [6] a *Q*. [7] lavoweson appent *Q*. [8] appent a nous a presenter *D*. [9] *Ins.* fumes *Q*; *om. A*, *D*. [10] et *Q*. [11] qe chiet *Q*. [12] *Om.* sauntz *D*. [13] nul *D*.

Note from the Record (*continued*).

Walter and Isabella held the tenements now in demand of Roger by the assignment of [the demandant] and did not hold them of [the demandant] as he by his writ supposes; and of this [the tenant] puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the morrow of St. John Baptist. Process having been continued until a fortnight after Pentecost in the sixth year [A.D. 1313], a jury comes, and the jurors say that Walter and Isabella, at the time of the demise made to [the tenant], held the tenements as Isabella's dower of [the demandant] and not of the said Roger. Therefore it is awarded that [the demandant] recover his seisin against [the tenant] and that [the tenant] be in mercy.

17A. FRESSINGFELD *v.* COOKLEY (PARSON OF).[1]

Debate touching the patronage of vicarages and the cases in which a parson can pray aid of patron and ordinary.

John of Fressingfeld brought his *quare impedit* against one R., parson of the church of C., and said that wrongfully he disturbed him [from presenting] to the vicarage of C.: and wrongfully for this reason, that one [Randolph] was seised of the manor etc. to which the advowson of the vicarage was appendant and in his time presented one Stephen, who on his presentment [was admitted] etc. And [Randolph's heir] granted the manor to one [Robert], who granted it to us by fine, so that it belongs to us to present.

Herle. You bring this writ against us as against the parson of the church. We tell you that we found our church seised of the whole on the day of our presentment, and we were presented to the whole church without any vicarage being severed in our time or in the time of our predecessor, parson of the same church; and we cannot be a party to plead anything which puts our church in debate without the bishop and the patron. We pray aid of them.

Toudeby. We bring our writ against you as a disturber, and we have said that [Randolph], whose estate we have, presented to the vicarage as a separate thing, and you cannot say that you are presented to the vicarage. So we demand judgment whether you shall have aid.

Herle. You cannot affirm a tort in our person, for we found our church seised of the vicarage as annexed etc., and our predecessor

[1] Proper names from the record.

nostre predecessour seisi del entier, et le patronage tot un, et la vicarie nient severé.[1] Par qei sauntz le patron etc., et prioms eide. Et d'aultrepart, si une anuyté fust graunté[2] de cele eglise, a cele charge ne porreoms nous estre partie sauntz patron et evesqe. Nent plus de choce qe chiet en discrès,[3] etc. sauntz eaux. Et depus qe le patronage est tot un et nous seisi de la vicarie annexé, la quel ne poet estre severé sauntz etc., et prioms eide etc.

Berr. Il demaunde cest vicarie vers vous com severé et dit qe un W., qi estat il ad pris, present[a][4] a la vicarie severalment. Et vous ne poetz en vostre persone nul dreit de patronage affermer, ne qe vous estes presenté a la vicarie. Et possible est qe avaunt ceo qe vous fustes presenté al eglise,[5] de vostre tort demene vous ocupastes la vicarie et vostre predecessour ensement. Par qei de vostre tort demeine eide ne devetz avoir. Et d'aultrepart, si l'avowesoun de la eglise fust demaundé vers vous, averez[6] vous eide (*quasi diceret non*) ? Nent plus la ou il demaunde la vicarie.

Et fust osté de eide etc.

17B. FRESSINGFELD *v.* COOKLEY (PARSON OF).[7]

Johan de Fresengfelde porta son *quare impedit* vers Robert persone de l'eglise de Kokesleye, par la reson q'il fut seisi du manier a qy l'avowesoun de la vikerie etc.

Robert dit qe son predecessor fut presenté al eglise enterement et morust persone et personé del eglise avantdit saunz diminucione de la vicarie ; et il trova sa eglise seisi et pr[esenté][8] sanz diminucione de vicaré apendant, et ne put ceste chose en descrès de la eglise avantdit sanz T. de qy avowerie etc. et B. evesqe de lu mener en jugement. Et pria eyde.

Hertepol. L'avoweson chet en temporalté et la vicarie en l'espiritualté. Et nous sumes a pleder le dreit de l'avoeson de la vicarie et noun pas la vicarie. Dount semble qe eyde etc. Mès piert qe vous ne clamet rien en l'avoeson, et priom bref al evesqe.

[1] qe nous trovames nostre vicarie nent severe *D.* [2] demande *D*, *Q.* [3] descresce *D* ; descreez *Q.* [4] il ad present' *Q* ; il ad presenta *D.* [5] *Ins.* qe *Q* ; *ins.* qe vous *D.* [6] averietz *D.* [7] This second version from *R.* [8] *Or perhaps* pris.

was seised of the whole, and the patronage is all one and the vicarage not severed. Therefore without the patron etc.; and we pray aid. Besides, if an annuity were [demanded] from this church, we could not be a party without patron and bishop. No more can we without them plead about anything that makes for the decrease [of our church]. And, since the patronage is all one, and we are seised of the annexed vicarage,[1] and it cannot be severed without [bishop and patron], we pray aid.

Bereford, C.J. He demands this vicarage against you as severed, and he says that one [Randolph], whose estate he has, presented to the vicarage separately. And you cannot affirm that any right of patronage is in your person or that you are presented to the vicarage. And it is possible that before you were presented to the church, you by your own tort occupied the vicarage, and that your predecessor did so too. So by reason of your own tort you ought not to have aid. Besides, if the advowson of the church were demanded against you, would you have aid? Not so, and no more where the vicarage is demanded.[2]

And he was ousted from aid etc.

17b. FRESSINGFELD *v.* COOKLEY (PARSON OF).[3]

John of Fressingfeld brought his *quare impedit* against Robert, parson of the church of Cookley, for the reason that [the plaintiff] was seised of the manor to which the advowson of the vicarage belonged etc.

Robert said that his predecessor was presented to the church as an entirety and died parson imparsonee of the church without any diminution by a vicarage, and he found his church seised and [he was] presented without any diminution [of the church] by a vicarage thereto belonging, and that to the decrease of his church he cannot bring this matter into judgment without T., by whose avowry [he is parson] and B. the bishop of the place. And he prayed aid.

Hartlepool. The advowson is a temporal matter and the vicarage is a spiritual. Here we have to plead about the advowson of the vicarage and not the vicarage [itself]. So it seems that aid [should not be granted]. On the contrary, it appears that you claim nothing in the advowson, so we pray a writ to the bishop.

[1] This seems equivalent to saying that there is not and never has been any vicarage at all. See the next report.

[2] For a continuation of the debate see the following report.

[3] For this report we are dependent on a single manuscript.

Herle. Par deux resons deit homme avoir eyde de patroun et de evesqe ; de [1] patroun, pur ceo qe la persone ne put estre partie en descrès ne en charge du dreit del avoeson ; del evesqe, pur ceo qe la eglise chet en jurisdiction d'evesqe. Et si bref de annuité fut porté vers R. dount la eglise fut chargé par assente de patroun et del evesqe, il ne resp[ondreit] pas de l'annuité sanz eyde de patroun et de evesqe. Sic hic, depus q'il fut presenté enterement al eglise, sanz ceo qe la vicarie fut dependant ; et vous ne poet dire qe cely E. par qy mort la vicarie est vacaunt fut presenté ne institut pus le temps del presentement R. par qey la vicarie fut dependaunt, jugement si eyde ne devoms avoir.

Berr. Vous pledez pur ceo qe vous ne poet charger ne descharger vostre eglise. Ceu r[eson] chet en espiritualté. Et pur nul rien qe vous avetz uncore dit ne savom rien si vous clamez rien en l'avoeson.

Et pus furent ostés de l'eyde.

Toud. dit coment Robert persone etc. fut presenté par Roger de Huntyngfelde, et iij. persones avant ly r[eceus] et instituts de l'evesqe, et toux ceux ount tenuz la eglise entiere, et furent presentés en temps le Roi E. pere etc. ent[erement] saunz diminucion ou saunz ceo qe askun vicar[ie] fut en lour temps. Jugement, si a cesti bref de possessioun devoms respondre. Et Sire, J. de Fresengfelde fit son title pur ceo qe Rauf de Westone presenta Estevene, par qy mort etc. ; de Rauf descendi le manier de C. a qey l'avoeson est etc. a A. com a fitz et heir ; de A. a B. ; le quel B. granta le manier etc. a C. ; C. a J. de F. par fyn en le rendre ; [2] issint etc.

Scrop. Dreyn presentement est respons a *quare impedit* ; mès vous grantez le dreyn presentement de E., par qy mort etc. e ne allegget nul presentement pus par vous ne autre. Jugement, et priom *breve episcopo.*

Hertepol. Rauf de Weston avoit ij. estatz. Il fut seisi du manier et presenta la persone com un gros et a la vicarie com un gros. Et desicùm vous ne dedites pas q'il presenta le vicare etc.

Et pus furent chacez a respondre a la reson.

[1] qe *R.*

[2] *Possibly* remeindre *R.*

Herle. There are two reasons why one should have aid of patron and bishop. One should have aid of the patron because the parson cannot be party to any decreasing or charging of the right of the advowson. And aid of the bishop should be had, for the church lies in his jurisdiction. If a writ of annuity were brought against Robert [the parson] as for an annuity charged on the church by the assent of patron and bishop, he would not have to answer without their aid. So here. Since [Robert] was presented to the church as a whole with no vicarage dependent from it, and you cannot deny that this [Stephen], by whose death the vicarage is vacant, was presented and instituted after the presentation of Robert,[1] we pray judgment whether we should not have aid.

Bereford, C.J. Your plea is that you cannot charge or discharge your church. That reason is a spiritual matter. But from anything that you have said we cannot learn whether you claim anything in the advowson.

And their aid-prayer was rejected.

Toudeby told how Robert the parson was presented by Robert of Huntingfield, as were the three preceding parsons, and how they were admitted and instituted by the bishop, and how they held the church as one entire thing, being presented in the time of King Edward, father [of the present King, and holding] without any diminution and without the existence of any vicarage in their time. And he demanded judgment whether he ought to answer to that possessory writ. And Sir, (said he) John of Freshingfield makes his title in this wise :—Randolph of Weston presented Stephen, by whose death [the vicarage is now vacant] ; from Randolph the manor of C., to which this advowson [is appendant], descended to A. as son and heir ; from A. to B. ; B. granted the manor to C., and C. to John of Fressingfeld by fine upon render ; and so, etc.

Scrope. Last presentation is an answer in a *quare impedit* ; but here you concede as the last presentation that of Stephen, upon whose death [the vicarage is vacant], and you allege no later presentation made by you or anyone else. We pray judgment and a writ to the bishop.

Hartlepool. Randolph of Weston had two estates. He was seised of the manor and he presented to the parsonage as to a thing by itself, and [he also presented] to the vicarage as to another thing by itself. And since you do not deny that he presented the vicar, etc.

And afterwards they were driven to reply to the plea.

[1] The text here inserts ' whereby the vicarage was dependent.'

Toud. Qe iij. persones tindrent l'eglise entier[ement] etc.

Et adiurnentur in mensem Pasche.

Scrop, Justice. Si un lay patroun eit une vicarie, et cely q'est persone tent l'eglise enter[ement] et tret a ly la vicarie, et son successor après tent l'eglise enter[ement] en purseuaunt le tort, et la terce, et la quarte, entendez vous par tant qe le dreit seit esteynt de la vicarie en la persone le very patroun ?

Toud. C'est un bref de dreit qaunt a Sire John de F., et a nous un bref de possessioun. Dount, desicum nous voloms averer qe nous et iij. persones predecessors persones de l'eglise de C. ount tenu l'eglise enter[ement] sanz diminucioun ou sanz ceo qe vicar[ie] i fut en vostre temps ou en temps vostre feffour ou en tems le feffour vostre feffour, asset nous suffit de abatre cesti bref de possessioun.

Hertepol. Rauf de qy etc.[1] avoit ij. estaz, pur ceo q'il tynt le manier de C. etc. a qy etc. et presenta al eglise une persone, qe etc., et ce est un estat et un gros : un autre qe presenta a la vicarie etc. et c'est un autre gros ; et morust vicare ;[2] et desicum nous sumes purchasor, et le dreit a nous est par my le purchas, et vous ne dedites ne defetes pas nostre title, jugement etc., et priom bref etc.

Toud. Vous dites qe vous estes purchasour et rien ne mostrez a la court qe le testemoyne, ne especialté ne mostrez coment la vicarie seit severé de la eglise. Et comune usage du pays est de tenir l'eglise entere, sanz ceo q'il i ust especialté a fere la vicarie un gros et a severer la del eglise ; ou encountre comune dreit et usage du pays etc. jugement etc.

Scrop. Depus qe nous sumes seisi du manier, n'est pas mestier de mostrer especialté, qar, tut fussoms nous avenuz al manier par disseisine ou par abatement, si nous poums dire qe nous sumes seisi du manier etc. e qe l'avoeson est apendant al manier, asset nous suffit qaunt a recoverer l'avoeson.

Toud. se tint a son premier respons. Et les altrez furent chacez a ceo r[espons] et pristerent un *prece partium* usque etc.

[1] *Om.* etc. *R.*

[2] *Corr.* morust seisi (?).

Toudeby. [Ready to aver] that three [successive] parsons held the church as one entire thing.

The case was adjourned to a month from Easter.

Scrope, J. If a lay patron has [the advowson] of a vicarage, and the man who is parson [wrongfully] holds the church as a whole and draws the vicarage to himself, and his successor does the like, continuing the tort, and a third parson and a fourth, do you think that the right which was in the person of the true patron is thereby extinguished?

Toudeby. This is a writ of right as regards [the plaintiff];[1] but for us it is a possessory writ. So, since we are ready to aver that we and the three preceding parsons, our predecessors, held the church as one whole without there being any vicarage there in your time or that of your feoffor or of your feoffor's feoffor, we have said enough to abate this possessory writ.

Hartlepool. Randolph, from whom [we take our title], had two different estates. He held the manor of C. to which [the advowson belongs] and presented a parson to the church, who [was admitted, etc.], and that is one thing by itself. But, secondly, he presented to the vicarage, and that is another thing by itself. And he died seised.[2] And since we are a purchaser, and the right is ours by purchase, and you do not deny or defeat our title, we pray judgment and a writ [to the bishop].

Toudeby. You say that you are a purchaser, and you show nothing to the Court which witnesses this, and you produce no specialty showing how the vicarage was severed from the church. The common usage of the country is that the church should be held as a single whole unless there is specialty making a separate vicarage and severing it from the church. So we pray judgment whether against common right and the usage of the country [you shall be answered without specialty].

Scrope. Since we are seised of the manor, there is no need to show specialty; for, even if we came to the manor by disseisin or abatement, if we can say that we are seised of the manor to which the advowson is appendant, that is enough to entitle us to recover the advowson.

Toudeby held to his first answer. And the others were driven to that answer and took a day *prece partium* until etc.

[1] Apparently because the writ of right of advowson would not be open to a purchaser who had not previously presented.

[2] Our only MS. says 'died vicar.'

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 108, Suf.

Robert, parson of the church of Cukeleye,[1] in mercy for divers defaults.

The said Robert was summoned to answer John de Fressingfeld of a plea that he permit him to present a fit parson to the vicarage of the church of Cukeleye, which is vacant and is within his gift etc. John, by his attorney, says that one Randolph de Weston was at one time seised of the manor of Cukeleye, to which the advowson of the said vicarage belongs, and presented one Stephen his clerk, who at his presentation was admitted and instituted in time of peace, in the time of King Henry, grandsire of the now King, by whose death the vicarage now is vacant; and that from Randolph the right of the manor together with the advowson of the vicarage descended to one William as son and heir; and that he [William] gave the

18A. DEVEREUX *v.* TUCHET.[2]

Entré ou cely a qy le remeindre fust graunté porta bref par resoun de l'alienacioun le tenaunt a terme de vie: et abata: ou enfaunt denz age serra respondu de soun purchaz.

Entré foundu sur statut, ou l'enfaunt fut respondu durant soun nounage, pur ceo qe les tenemenz furent de soun purchatz, com par remeindre talié en sa persone.

Johan de Vyayn[3] porta soun bref d'entré foundu sur statut vers William de Cochet, et demaunda le manier de L.,[4] en le quel il n'ad entré sy noun pus le lees qe W. de Vien et Luce[5] sa femme de ceo firunt a Waulter Evesqe de Covyntre et de Lycheffelde etc.,[6] et qe a luy doit revertir par forme de statut sur tiel maniere d'alienacioun fait. Et counta qe Robert Burnel dona le manier de L. a William et Luce a terme de lour ij. vies, et après lour decès remeindr[eit] a Estevene de Vyen[7] pere J. et a ses heirs.[8]

Denom. C'est un bref de dreit, et cest enfaunt qe demaunde est dedenz age. Jugement, si duraunt son nounage deive estre r[espoundu].[9]

Hedon. Le bref n'est pas purement en le dreit, einz est mixt et foundu sur un tort par l'alienacioun ceaux qe furent tenauntz a terme de vie. Jugement, si en ceo cas deive estre r[espoundu].

[1] Mod. Cookley. [2] Text of this first version from *A*: compared with *D*, *Q*, *S*, *T*. Headnotes from *A* and *Q*. [3] Wres *D*; Wros *Q*; Esteven fiz Johanne Deveroysse *S*; *sim.* *T*; and so below. [4] Loueney *S*, *T*. [5] W. Deveroyse et Alice *S*, *T*. [6] en fee *D*, *Q*. [7] Wres *D*; Wros *Q*. [8] et le quel a ly deit revertire per formam statuti de communi concilio etc. per alienacionem factam in feodo *S*; *sim.* *T*. [9] rescu *Q*.

Note from the Record (*continued*).

manor together with the advowson to one Robert de Ludham; and that Robert by a fine levied in the court of King Edward, father of the now King, in Easter term in the twenty-first year of his reign, between Robert and [the plaintiff], granted and rendered the manor to [the plaintiff] to hold to him and his heirs;[1] wherefore he says that he is seised of the manor, to which the advowson of the vicarage pertains, and that for this reason it belongs to him to present thereto, and that [the defendant] unjustly impedes him: damages, two hundred pounds.

[The defendant], by his attorney, comes, and a day is given them by prayer of the parties here in one month after Easter.

We have not as yet found more of this case, and it will be observed that even the second of our two reports does not suggest that an issue was reached. The aid prayer would not, we take it, appear upon the record, since it was rejected.

18A. DEVEREUX *v.* TUCHET.[2]

The Statute of Gloucester, which gives an action to the reversioner when tenant in dower alienates in fee, does not sanction a similar writ for the remainderman on an alienation in fee by tenant for life. A writ mentioning that Statute is brought by the infant heir of a remainderman. After a decision that the parole is not to demur for his nonage, the writ is quashed as not warranted by common law or statute.

[Stephen Devereux] brought his writ of entry founded on the Statute against William [Tuchet], and demanded the manor of L., 'into which he has no entry save after (*post*) the lease [in fee] which William [Devereux] and Lucy his wife made to Walter, Bishop of Coventry and Lichfield, and which [manor] ought to revert to [the demandant] by the form of the Statute made concerning such manner of alienation.' And he counted that Robert Burnel gave the manor to William and Lucy for the term of their two lives, and after their deaths it was to remain to [John Devereux], father of [the demandant], and his heirs.

Denom. This is a writ of right and the demandant is an infant within age. Judgment, whether he should be answered during his nonage.

Hedon. The writ is not purely in the right, but is mixed, and is founded upon a tort, namely an alienation by tenants for life. Judgment, whether in this case he ought [not] to be answered.

[1] See Feet of Fines, Case 216, File 42, No. 6.

[2] This case is Fitz. *Entre*, 7. Proper names from the record.

Herle. C'est un bref de dreit en soun cas, et l'enfaunt est dedenz age. Jugement etc.

Kyng.[1] L'alienacioun fut fait deynz age et l'actioun nous acrust deynz age etc.

Herle.[2] Le quel sount W. et L. morts ou en pleyn vie? (*quasi diceret* si l'enfaunt recovereit ores, après la mort W., et L. porteroit le *cui in vita* par l'alienacioun le baroun et recovereit vers l'enfaunt, et issint un jugement defreit un aultre.)

Et purceo qe ceo qe l'enfaunt demaunde est de soun purchas, en quel cas enfaunt dedenz age serra r[espoundu], par qei fust agardé qe la partie deit outre.

Herle. Vostre bref est foundu sur ij. choces; la une est qe après le decès W. et L. etc. et[3] vous deit remeindre. Et pus dites vous qe vous deit revertir par l'alienacioun, et issint la une forme contrarie[4] al autre. Et d'aultrepart cesti bref n'est pas garraunti del statut,[5] qe le statut ne doune recoverir fors soulement la ou femme[6] tenaunt en dowere aliene en fee,[7] celuy a qi la revercioun est ad meintenaunt soun recoverir etc. Si voletz estre eidé par statut, il covent qe ceo soit par certeyn paroule comprise dedenz le statut, ou le statut overe rien pur vous, purceo qe vous estes en le remeyndre et par consequent[8] hors de cas de statut. Jugement, si a cesti bref devetz estre r[espondu].

Denom. Mesqe statut ne fait point mencioun de tenaunt a terme de vie, homme deit supposer qe, s'il aliene, celuy en le *reverti* avera meyntenaunt soun recoverir, qe statut voet q'en semblable cas semblable remedie soyt ordiné. Par qei etc.

Berr. Le quel voletz vous estre eidé, par statut ou par comune ley? Si par comune ley, vous n'averetz nul bref, et[9] par statut il vous covent qe ceo soit par aschune paroule comprise dedenz le statut, ou le statut overe rien pur vous forsque soullement ou[10] femme tenaunte en dowere[11] aliene, celuy a qi la reversioun etc.[12] Par qei agarde la court qe vous ne preignez rien par vostre bref etc.

[1] *Om.* this speech *A*; *ins. D, Q.* [2] *Ber. S, T.* [3] a *Q.* [4] fourme est contrariaunt *Q*; *sim. D.* [5] dautrepart lestat' est garr' de ceo br' *Q.* [6] homme *D.* [7] *Ins.* etc. *D, Q.* [8] et par cas *Q.* [9] *Ins.* si *D.* [10] pur *D, Q.* [11] *Ins.* si ele *D.* [12] *Ins.* avera soun recoverer etc. *Q*; *sim. D.*

Herle. For his case it is a writ of right,[1] and he is an infant within age. Judgment etc.

Kingeshemede. The alienation was made and the action accrued while he was under age.

Herle.[2] Are William and Lucy dead or living? (The point of his question was that if the infant were now to recover, then, after William's death, Lucy might bring the *cui in vita* on the alienation by her husband and would recover against the infant, and so one judgment would defeat another.)

And since what the infant demanded came to him by purchase, in which case an infant shall be answered, the tenant was bidden to plead over.

Herle. Your writ is founded upon two things. First, that after the decease of William and Lucy there is a remainder to you. Secondly, you say that the tenements should revert to you by reason of the alienation. Here are contrary forms: [remainder and reversion]. Again, this writ is not warranted by the Statute.[3] The Statute gives recovery only where a woman holding in dower alienates in fee, and then the reversioner is to have his recovery at once. If you wish to be aided by Statute, that must be by some certain words comprised in the Statute. But the Statute does nothing for you, who are a remainderman and consequently outside the statutory case. Judgment, whether you ought to be answered to this writ.

Denom. Albeit the Statute does not make mention of the case of a tenant for life, one cannot but suppose that if he alienates, the reversioner at once has a recovery, for [another] Statute[4] wills that in like case like remedy be ordained. Therefore etc.

Bereford, C.J. On what will you rely: Statute or common law? At common law you have no writ; and, if you rely on Statute, it must be on some words comprised in the Statute. But the Statute does nothing for you; it only says that if a tenant in dower alienates, the reversioner [can recover at once]. Therefore the Court awards that you take nothing by your writ etc.

[1] Because as remainderman he could have no other.
[2] This speech is also ascribed to the chief justice.
[3] Stat. Glouc. c. 7. [4] Stat. Westm. II. c. 24.

18B. DEVEREUX *v.* TUCHET.[1]

Estevene de Eweroys[2] par son gardein porta un bref fondu sur Statut de Gloucestre vers William Tochet,[3] et demanda le manier de C., forpris etc., et counta qe un Robert Burnel de cel manier fut seisi; le quel Robert granta mesme cele manier, forpris etc., a un William et Luce[4] sa femme, qe ceo tyndreient a terme de lour ij. vies, et après lour decès etc. remeindreit a W.[5] pere l'enfaunt et as heirs. Et dit qe W. n'out entré si noun pus le lees qe William et Luce sa femme, qe ceo tindrent a terme de lour ij. vies, de ceo en firent a Walter Evesqe de Coventrie et de Luchefelde en fee, et le quel etc., forpris etc., al avantdit Estevene, fitz et heir etc., par forme del statut etc. deit revertir etc.[6]

Pass. Sire, c'est un bref de dreit doné par statut etc., et demandoms jugement si deinz age deive estre r[espondu].

J. Denom. Statut nous eide, qe dit qe si femme qe tent en dowere aliene en fee, celui a qi la reversion append eit meintenant son recoverer par bref d'entré, sanz ja limiter le quel il soit dedeinz age ou de plein age. Et del hure qe W. et Luce n'avoient qe terme de vie etc. et ount aliené en fee en nostre desheritaunce, jugement si nous ne devoms deinz age estre r[espondu].

Pass. Vous demandez com heir celui en le remeindre, et desicom vostre action est de sone[7] dreit conveyé[8] de vostre auncestre a vous, jugement etc.[9]

Kyng. L'alienacion en fee par ceux etc. est la cause de nostre action, la quele alienacion fut fet en nostre nounage; par quei nous demandoms jugement si en nostre nounage ne devoms estre r[espondu]. Et d'autrepart c'est nostre bref de possession qaunt a ore.

Pass. weyva sa excepcion et dit qe ceo est un bref fondu sur Statut de Gloucestre; le quele estatut ne fet mencioun fors la ou femme qe tent en dowere etc. aliene etc. qe celi a qi la reversion appent eit son recoverer etc., et desicom vous demandez per voye de remeyndre, et nent par[10] reversion,[11] demandoms jugement si a cesti bref, qe n'est mye garranti de[12] statut, devez estre r[espondu].

Denom. Statut ne fet mencion fors taunt soulement de femme qe

[1] *Vulg.* p. 67. Text from *M*: compared with *B*, *P*, *Y* (f. 90d). [2] Estevene de Eweros *B*. [3] Touchet *B*. [4] Alice *Y*. [5] Estevene *B*, *P*, *Y*. [6] remeyndre *B*. [7] de un *P*. [8] conveye *P*; com neye *M*; convee *Y*. [9] est dun droit qe comencea en la persone vostre auncestre et issint a vous, jugement *B*. [10] *Ins.* r[eson] de *Y*. [11] *Om.* et . . . reversion *B*. [12] par *P*.

18B. DEVEREUX *v.* TUCHET.

Stephen Devereux by his guardian brought a writ founded on the Statute of Gloucester against William Tuchet and demanded the manor of L. (except etc.), and counted that one Robert Burnel was seised of this manor and granted the same (except etc.) to William and Lucy his wife, to hold for the term of their two lives, and after their decease it was to remain to [John], father of the infant, and to his heirs. And he said that [the tenant] had no entry save after (*post*) the lease which William and Lucy his wife, who held it for their two lives, made to Walter of Langton, Bishop of Coventry and Lichfield, in fee, and that the manor (except etc.) ought to revert to Stephen, son and heir, etc., by the form of the Statute.[1]

Passeley. Sir, this is a writ of right given by Statute etc., and we pray judgment whether he should be answered while he is under age.

J. Denom. We are helped by the Statute, which says that, if a woman who holds in dower alien in fee, the reversioner shall at once[2] have his recovery by writ of entry, without in any way limiting this to a case in which he is of full age. And since William and Lucy only had for term of life, and, to our disheritance, have aliened in fee, we pray judgment whether we ought not to be answered under age.

Passeley. You demand as heir of a remainderman, and since your action is on a right conveyed[3] from your ancestor to you, judgment etc.

Kingeshemede. The alienation in fee by [tenants for life] is the cause of our action, and that alienation was made during our nonage, so we demand judgment whether we ought not to be answered in our nonage. Besides, at the present moment this is our possessory writ.

Passeley waived his plea and said: This is a writ founded on the Statute of Gloucester, which makes mention only of the case in which a tenant in dower etc. alienates etc., in which case the reversioner is to have his recovery. And since you demand by way of remainder, and not by reversion, we pray judgment whether you should be answered to this writ which is not warranted by the Statute.

Denom. The Statute only makes mention of [alienation by] a

[1] Stat. Glouc. c. 7.

[2] The Statute says 'eit meintenaunt recoverer a demander la terre.'

[3] Not *conveyed* in any technical sense, but passing to you from your ancestor, so that you are not in the class of infant purchasers.

tent etc. Et purceo[1] nous veoms qe si celui qe tient par la ley d'Engleterre aliene etc. qe celui a qi la reversion appent par autiel cours de ley averoit son recoverir par bref d'entré, *non obstante* etc.; le quele recoverir est afforcé par autre[2] estatut qe veot 'in simili casu[3] simile remedium est apponendum.'[4]

Ber. Le quel afforcez vous vostre action par comune ley ou par statut? Par comune ley nent, qar vostre bref veot qe le manier vous doit revertir[5] par forme de statut, or n'ad il nul estatut en tiel forme etc.; par qei etc. Et la ou vous ditez[6] 'simili casu etc.' vostre cas n'est mye semblable a le statut et[7] ne semblable a l'ensaumple qe vous fetes etc.[8]

Hervi. Pur ceo qe vostre bref est fondu sur statut qe n'est mye garraunti par statut,[9] si agarde la court qe Estevene ne preigne rien etc., sanz amerciment, pur ceo q'il fut deinz age, et William[10] a Dieu sanz jour etc.

{Et[11] pus Estephen se pleint en la Chancelerie qe sun bref fust abatu etc Le clers de la Chancelerie firent venir W. Bereford, et li demandoient pur qei etc. Il dit q'il se fut nent meintenable par statut etc.

Barneby. Le statut de Gloucestre voet qe femmes en dowere, si eles alienent, qe cely a qi la reversion apent eit meintenant lour rescoverir, et Westmouster le second 'quod in simili casu etc.'

Ber. Beneit soit il qe cel estatut fist! Et fete le bref et nous le meintendroms etc.}

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 97d, Heref.

Stephen, son of John Devereux (*de Ebroicis*), by John de Wrmele his guardian, demands against William Tuchet the manor of Leonhales[12] with the appurtenances (except two mills, four carucates of land and seven pounds' worth of rent in the same manor and the advowson of the church of the said manor) which Robert Burnel gave to William Devereux and Lucy his wife for the life of William and Lucy, and which after the demise in fee made thereof by William and Lucy to Walter, Bishop of Coventry and Lichfield, against the form of the Statute in this case provided, ought to remain to the said Stephen, son and heir of John Devereux, by the form of the gift which Robert [Burnel] made thereof to William and Lucy.

[1] et ja tardes *B*; et nemy pur ceo *P*, *Y*. [2] *Om.* autre *B*. [3] etc. *and end speech*, *P*. [4] en semblable cas semblable remedie soit fet *Y*. [5] remeindre *Y*. [6] *Ins.* in *P*. [7] *Om.* et P. [8] *Substitute for this speech* Pass. Vostre cas nest mye semblable etc. *B*. [9] *Om.* par statut *B*. [10] W. Tochet *Y*. [11] This end of the case from *Y*. [12] Mod. Lyonshall.

woman holding [in dower]. Yet, none the less, we see[1] that if a tenant by the curtesy alienates, the reversioner has by similar course of law his recovery by writ of entry; and this recovery is sanctioned by another Statute which wills that in like case there be like remedy.

Bereford, C.J. On what do you rely for your action: on common law or Statute? Not on common law, for your writ says that the manor shall [remain] to you 'by the form of the Statute,' and there is no Statute in that form. And as to what you say about like remedy in like case, your case is not like the case mentioned in the Statute nor like the example[2] that you allege.

Stanton, J. As your writ purports to be founded on a Statute and is not warranted by the Statute, the Court awards that Stephen take nothing by his writ, but without amercement since he is under age, and that William take farewell without day, etc.[3]

{And[4] afterwards Stephen complained in the Chancery that his writ was abated. The clerks of the Chancery caused W. Bereford [C.J.] to come, and demanded of him why [he quashed the writ]. He said that it was not maintainable by Statute etc.

Barneby.[5] The Statute of Gloucester wills that, if women holding in dower alienate, the reversioner shall at once have his recovery; and Westminster the Second wills that *in consimili casu etc.*

Bereford, C.J. Blessed be he who made that statute! Make the writ and we will maintain it.}

Note from the Record (*continued*).

[The tenant], by Nicholas de Welleton, his attorney, after formal defence, says that he ought not to answer him [the demandant] to this writ; for he says that, whereas [the demandant] by his writ supposes that the said manor (except etc.) after the demise made by William and Lucy to the Bishop against the form of the Statute in this case provided, ought to remain to [the demandant], there is not any Statute under which a writ of this sort may be devised ('non est aliquod statutum in quo huiusmodi breve sit formatum etc.'), and thereof he demands judgment.

And [the demandant] cannot deny this. Therefore it is awarded that [the tenant] go thence without day, and that [the demandant] take nothing by this writ, but be in mercy for his false claim. But he is pardoned by the justices, for he is within age.

[1] Or 'we lately saw.'

[2] That of tenant by the curtesy.

[3] The decision does not seem to imply that a good writ could not be made under Stat. Westm. II. c. 24. See Sec. Inst. 309.

[4] We are dependent on one manuscript for this scene in the Chancery. It relates also another similar scene which led to the making of the writ *in consimili casu*. This will be set forth below, p. 109.

[5] Robert de Bardelby was one of the principal Masters in Chancery.

19A. ANON.[1]

Replegiari, ou piert qe destresce pur service arere n'est mye avowable pur bleez en tasse.

Nota qe homme ne poet avowrie faire pur services arere de [2] destresce fait par blees tassés [3] ne par feyns : par Brab. et Spigurnel : mes celuy q'est issint destreint avera soun bref de trespas.[4]

19B. ANON.[5]

Trespas pro catallis captis pro serviciis et consuetudinibus nomine destrictionis : ou fut dit qe homme ne put prendre blees en sok' dementers q'il put trover autres destresces.

James de Benynde porta une breve de trespas vers un Priour et dit com il avoit prise chateux mesme celi Priour, scilicet feyns et aveyns, ad valenciam etc. pro serviciis et consuetudinibus nomine districtionis etc., mesme celi Priour mesme ceux chateux li detolly etc. ad dampnum etc.

Toud. defendit et demanda l'oy due breve (et habuit).

Pass. Jeo n'oye [6] unqes parler q'om purreit prendre chateux, scil. blee cressaunt en terre ou en schok' [7] pur rente arere.

Roub. Issi ensuereit qe chescoyn homme a qe noil rente ne fut due purreit prendre les blés et les chateux en la terre qe serreit grant doresce.

Spig. Si vous eussez enporté ces bleez et il eust porté soun breve de trespas, vous ne purriez my fere bon avowerie ; et, depuis qe vous ne serrez receu d'avower, il semble qe a ceti bref, q'est auxi com breve de trespas, ne devez estre rescu.[8] D'autrepart, vous purriez avoir prise destresce qaunt la terre fut en le mayne etc. d'avers [9] prise les faukes et fausilles etc. Secus est de catallis. Et pur ceo qe vous avez dit qe la terre fut maynoveré ou vous puissez avoir prise destresce etc., et qe les blés furent couchez en sok', de qai ley ne soffre ney qe vous

[1] Text from *A* : compared with *D*, *Q*. [2] pur *D*. [3] par chatel si com par bleez cressaunz en mesme le soil etc. *Q* ; *sim. D*, *but* bleez tassez. [4] bon bref en le cas de trespas *Q* ; mes avera bon bref de trespas sur celui qe la destresce fit *D*. [5] Text from *S* : compared with *T*. [6] noy *T*. [7] sok' *T*. [8] resceu (*in full*) *T*. [9] *Corr.* d'avoir (?).

19A. ANON.[1]

Corn in shocks is not to be taken in distress for services arrear.

Note that for services arrear a man cannot avow a distress made upon corn in shocks or on hay, and he who is thus distrained shall have his writ of trespass: per BRABAZON, C.J., and SPIGURNEL, J.

19B. ANON.[2]

If other distress can be found, corn in shocks is not to be taken for services arrear. The distrainor sues the tenant for retaking things taken by way of distress.

James of Benynde brought his writ of trespass against a Prior, and said that, whereas he had taken the Prior's chattels—to wit, hay and corn—to the value of etc., by way of distress etc., for services and customs, the Prior has taken away[3] these chattels from him etc. to his damage etc.

Toudeby defended, and he demanded a hearing of the writ, and had it.

Passeley. I never heard tell that one could take chattels, to wit, corn growing in the land or in shocks, for rent arrear.

ROUBURY, J. It would follow that any man to whom any rent was due could take the corn and the chattels in the land, and that would be a great hardship.

SPIGURNEL, J. If you had taken away his corn, and he had brought his writ of trespass, you could not have made a good avowry. And since you could not have made a good avowry, it seems that to this writ, which also is a writ of trespass, you cannot be received. Besides, you might have taken a distress when the land was being cultivated[4]—namely, the beasts and scythes and sickles. But otherwise of crops.[5] And since you have said that the land was being cultivated, so that you could have taken other distress, and have said that the corn was laid in shocks, whereof the law does not allow you

[1] This case is Fitz. *Avowre*, 189, where, however, the decision is ascribed to Bab[ington] and Skipwith, who belong to a much later age.

[2] This case, found in two books, is apparently the foundation of the preceding note.

[3] The *detolly* of the text (from *detollir*) seems an unusual form.

[4] See the French text, which does not seem correct.

[5] But the text says 'of chattels.'

puissez fere destrece, einz puissez avoir jetté[1] une destrece qaunt il furent enportez, si agarde la court qe vous ne pernez rien par vostre bref etc.

20A. HEYLING *v.* RABEYN.[2]

Garde porté vers executours ou il clamerent la garde par mye lees fait a lour testatour, et receu de pleder le dreit cely qe lessa la garde a lour testatour.

Bref de garde vers executours, ou il voucherent a garaunt executours: pus fut receu d'averer la priorité saunz avoir eyde del heyr.

De droit de garde porté vers executours, ou il voucherent a garraunt executours, et puis weyverent le woucher et plederent en le droit et prierent eyde del heyr, qe ne fuist pas graunté etc.

Un Johan porta soun bref de garde devers exequtours.[3]

Toud. Johan Wake[4] lessa la garde de cels terres et del heir a nostre testatour et obliga luy et ses heirs et ses assignez etc. Et vowchoms les executours J.[5] de Wake a garraunt.

Malm. Chescun voucher q'est[6] hors de cours[7] de comune ley serra par especiaulté, et[8] vous vowchez l'executour J.,[9] les queux sount mye obligez par l'especiaulté. Jugement, si a ceo voucher devetz estre receu.

Willigh. Les executours sount vouchez auxi come de chatel. Mès si le principale q'est testatour fust vouché etc. il serroit tenu[10] a la garrauntie. Par mesme la resoun les executours[11] qe representent l'estat le testatour.

Herle. Si homme vowche[12] executour qe sount estraunges, ceo covent estre par especiaulté,[13] et il ne sount par nometz en l'especiaulté.[14] Jugement etc.

Berr.[15] La ou vous dites qe les executours sount vowchetz com de chatel, vous dites mal, qar ceo n'est pas purement chatel. Et la ou vous dites qe le principal serroit tenu a la garrauntie ergo les executours,[16] ceo n'est pas verité.

Thoud. weyva le vowcher et dit qe l'auncestre le heir tient de J. de Wak et de ses auncestres, einz ceo q'il tient de vos auncestres. Prest etc.

[1] *Or* rette *S*, *T*. [2] This first version from *A*: compared with *D*, *Q*. Headnotes from *A*, *P*, and *D*. [3] *Ins.* et conta qe a tort lui deforcent etc. *D*. [4] de Wak' *D*, *Q*. [5] W. *Q*. [6] qe *A*; qest *Q*; qe est *D*. [7] hors de grez *Q*. [8] mais *D*. [9] W. *Q*. [10] *Om.* tenu *A*; *ins. D*, *Q*. [11] *Ins.* qe sount accessories *Q*; *sim. D*. [12] *Ins.* autre com assigne il coveynt moustrer especialte des assignement mes ore vous avetz vouche les *Q*. [13] *Om.* ceo . . . especiaulte *D*, *Q*. [14] *Om.* en lespeciaulte *D*. [15] *Ins.* a William Herle *Q*; *ins.* a Wilby *D*. [16] *Ins.* qe sount accessories *D*, *Q*.

to make distress, but you might have waited to cast a distress on it after it was carried, therefore the Court awards that you take nothing by your writ etc.

20A. HEYLING *v.* RABEYN.[1]

On a grant of a wardship by *A.* to *B.*, the deed contains a clause of warranty not mentioning executors on either side. The executors of *B.* are not entitled to warranty from the executors of *A.* In such a case an attempted voucher may be counterpleaded by the demandant. In a writ of right of ward against the executors of *B.*, they may plead priority of feoffment, and the demandant must answer them. *Semble* they are not entitled to pray aid of the heir of *A.*, at all events if he is in ward to the King.

One [William] brought his writ of ward against executors.

Toudeby. Joan Wake leased the wardship of these lands and of the heir to our testator, and bound herself, her heirs and assigns [to warranty]. We vouch the executors of Joan Wake to warranty.

Malberthorpe. Every voucher which is outside the course of the common law must be by specialty, and you vouch the executors of [Joan Wake], who are not bound by specialty. Judgment, whether you ought to be received to this voucher.

Willoughby. The executors are vouched as for a chattel. But if the principal—that is, the testator—were vouched, he would have to warrant; and by like reason the executors who represent his estate.[2]

Herle. If a man vouch executors [3] who are strangers, that must be by specialty, and they are not named in the specialty. Judgment etc.

Bereford, C.J. Whereas you say that the executors are vouched as for a chattel, you say what is not true, for this is not purely a chattel. And whereas you say that as the principal would be bound to warranty *ergo* the executors [4] are bound, that is not true.

Toudeby waived the voucher and said: The heir held of Joan Wake and her ancestors before he held of you or your ancestors. Ready etc.

[1] This case is Fitz. *Voucher*, 212. Proper names from the record.

[2] Some books say 'who are accessories.'

[3] One book compares the case of assigns.

[4] Some books say 'who are accessories.'

Malm. C'est un bref de dreit de garde a qei vous q'estes [1] executours ne poetz estre partie de [2] ceo dreit trier. Jugement etc.

Herle ad idem. C'est un bref de dreit ou l'issue se deit faire soulement en le dreit, et vous q'estes executours ne poetz [3] issue faire en le dreit, ne *per consequens* tiele r[espouns] doner.

Berr. Asset bien poet [4] il tiel r[espouns] doner de meyntenir lour estat et le dreit J., qi estat il ount.

Herle. Donqe dioms nous q'il tient de nous et de nos auncestres : prest [5] etc.

Toud. A ceo ne poems estre partie sauntz le heir J. de Wake et prioms eyde de luy.

Et habuerunt.[6]

20B. HEYLING *v.* RABEYN.[7]

Un homme porta bref de dreit de garde vers les executours un Johan Rageman,[8] et demanda la garde J. fitz et heir l'avandit [9] Johan. Les queux executours par eide etc. voucherent a garrant Mestre J. de Chickehale [10] et Phelippe le Chapeleyn et autres etc. executours de testament Johan de Wake [11] par le fet l'avantdit Johan,[12] qe voleit q'il [13] granta la garde de l'avantdite heir a Johan Rageman,[14] qi executours etc., et obliga lui et ses heirs et ses assignez a garrantir la garde de avantdite etc. tauntqe a son leal age a l'avantdite Johan Rageman et a ses heirs et a ses assignez.[15]

Malm. De comune dreit executors ne deivent garrantir [16] ne a la garrantie estre lyé ; et, desicom le fet qe vous mettez avant ne se estent [17] de un part ne d'autre, demandoms jugement si a tiel voucher, q'est encontre comune cours de ley, devez estre receu.[18]

Toud. Johan de Wake [19] obliga lui et ses heirs et ses assignez a nostre testatour et a ses heirs et a ses assignez. Par qei nous entendoms qe cele fet se extent a nous etc. Et d'autrepart, nous vouchoms a nostre peril, qe n'est a contrepleder de vous q'estes parties, mès de les executours qe sount vouchez [20] qaunt il vendrount en court.

[1] vous qestes *D* ; vous estes *A*, *Q*. [2] a *D*, *Q*. [3] *Ins.* nul *D*, *Q*. [4] pount *Q*. [5] *Om.* prest *A*. [6] *Om.* et habuerunt *Q*. [7] *Vulg.* p. 63. This second version from *M* ; compared with *B*, *P*, *S*, *T*, *Y* (f. 258). [8] de Rakeman *B* ; Rakenam *S*, *T*. [9] lavantdite *M*. [10] Techehale *B* ; Chehale *P* ; Tethalle *Y*. [11] de Bak' *B* ; Wak' *P* ; Jone de Wak' *Y*. [12] lavantdite Johane *M* ; Jone *Y*. [13] qe ele *Y*. [14] *Ins.* et ses assignetz (*and end statement*) *B* ; *sim. S*, *T*. [15] *Ins.* a garr' la garde de l'avantdite *M*. [16] estre garr' *B* ; estre garantie *S*, *T*. [17] *Ins.* a deux *B* ; *ins.* ne *Y*. [18] *Ins.* sanz especialte *Y*. [19] de B. *B*. [20] qest le countrepleder des executours *B* ; qe est en le countrepleder les executours *S*, *T* ; *sim. Y*.

Malberthorpe. This is a writ of right of ward, and you, who are executors, cannot be party to try that right. Judgment etc.

Herle on the same side. It is a writ of right, and the issue should be solely on the right; and you, who are executors, cannot join issue in the right or give such an answer as you have given.

Bereford, C.J. They can give such an answer well enough to maintain their estate and the right of Joan, whose estate they have.

Herle. Then we tell you that he held of us and our ancestors [by priority]: ready etc.

Toudeby. To that we cannot be a party without the heir of Joan Wake, and we pray aid of him.

They had it [not].[1]

20b. HEYLING *v.* RABEYN.

A man brought a writ of right of ward against the executors of one Joan [Brakenbergh] and demanded the wardship of J., son and heir of the said Joan. The executors by aid of the Court vouched to warrant Master John of Chichall, Philip the Chaplain and others, executors of the will of Joan Wake, by the deed of Joan Wake, which stated that she granted the wardship of the said heir to Joan [Brakenbergh], whose executors [were sued in the action], and obliged herself and her heirs and assigns to warrant the wardship of the said heir until his lawful age to the said Joan [Brakenbergh], her heirs and assigns.

Malberthorpe. By common right executors ought not to [be warranted] or be bound to warranty; and, as the deed that you produce does not extend [to executors] on the one side or the other, we demand judgment whether to such a voucher, which is against the course of the common law, you can be received.

Toudeby. Joan Wake obliged herself and her heirs and assigns to our testator and her heirs and assigns. So we take it that this deed does extend to us etc. Moreover, we vouch at our peril, and if the voucher is to be counterpleaded, it must be, not by you, who are parties to [this action], but by the vouched executors when they come into court.

[1] One of our books says that they had it; another is silent. But see the following report.

Herle. Si vostre voucher fut[1] par cours de ley, si purroms avauntage avoir de countrepleder vostre voucher par forme de statut, com a dire qe le vouché ne fut unqes seisi de la garde etc. ne ses auncestres. Et demandoms jugement si a cel voucher, qe nous ouste de nostre avauntage par statut et nous chace[2] a meschief, devez estre receu et en delaiant nostre action.

Wilb. Il ne bient vers nous autre chose demander[3] forsqe chatel,[4] en quel cas si le[5] principal soit obligé si deivent ses executours etc.

Ber. negavit aperte, et dit q'il vous mette ij. choses en queux vostre voucher pecche encontre[6] cours de ley. Un est qe le fet ne se extent de garrantir de rien[7] mès[8] vers executours.[9] L'autre est qe vous[10] devez com executours estre garrantiz. {Joe[11] ay esté xl. ans en court; joe ne oy unqes tel manere de garrant voucher estre receu.}

Herle. Si assigné vouche a garrant, covendreit q'il moustrast especialté q'il fut assigné (*quasi diceret sic*) ou autrement?

Toud. weyva son voucher, et tendi de averrer qe Johan Rageman, qi executours etc., tynt etc. de Johan Wake par priorité de feffement qe del[12] demandant.

Malm.[13] A ceo ne serez r[ece]u, qar le jugement trenche pur nous a toux jours a quei vous ne poietz estre partie. Jugement.

Et[14] hoc non obstante il fut resceu.

Malb. Le revers.

Toud. pria eide del heir. Et ne fut pas granté par *Ber.*, qar si eide lui fut granté del heir, qe fut deinz age et en la garde le Roy,[15] le heir vendra en court et priereit son age, et issint delayereit s'action par nounage celi par qi nounage sa actioun est encru.[16] Et ideo etas[17] non fuit concessa.

{*Toudeby*[18] vaywa le voucher[19] e r[espoundy] outre e dit pur les executours Johan Rageman qe les ancestres W. de C. tendrent le manoir de Blatam par les services de iij. feez de chivaler de Sire Johan de Wake baron Jone, qele Jone le dit garde a Jone Rageman

[1] *Ins.* resceyvable *S, T.* [2] *Sic B*; nous com a pleder *M*; *sim. P*; nous chace com a pleder *Y.* [3] recoveryr *P, S, T.* [4] chose recoverir qe damages qest chatel *B.* [5] la *M.* [6] *Ins.* comun *B, Y.* [7] de garr[antie] derein[er] *Y.* [8] *Om.* mes *B, Y.* [9] de recoverir garde vers exsecutours *S, T*; *ins.* qar la clause de garrantie ne fet nule mencion etc. *Y.* [10] *Ins.* ne *B, S, Y.* [11] Only in *Y.* [12] le *B.* [13] *Om.* speech *M*; *ins. B, P, S, T.* [14] *Om.* sentence *M*; *ins. B, P, S, T.* [15] *Om.* et . . . Roy *B.* [16] delaireit saction qe lui est acru etc. *B. End of report, S, T.* [17] *Sic B, M, P*; *corr.* auxilium. [18] The following from *Y.* [19] vouche *Y.*

Herle. If your voucher followed the [general] course of law, we should have the advantage of counterpleading it by the form of the Statute, as by saying that the vouchee and his ancestors were never seised of the wardship etc.[1] We pray judgment whether, in delay of our action, you should be received to the voucher which ousts us from our statutory advantage and drives us to hardship.

Willoughby. What they hope to recover from us is only a chattel[2]; and in case of a chattel, if the principal be bound, so also are the executors etc.

Bereford, C.J., denied this openly. They (said he) mention two points at which your voucher sins against the course of law. First, the deed does not extend to bind the executors to warranty. Secondly, you, being executors, are not to be warranted. {I have been forty years in court and never heard I such a voucher received.[3]}

Herle. If an assign vouches to warranty he must produce specialty showing that he is assign. Is not that so?

Toudeby waived the voucher and tendered to aver that John [Brakenbergh], whose executors [were being sued],[4] held etc. of John Wake by priority of feoffment before holding of the demandant.

Malberthorpe. To that you cannot be received, for a judgment on that averment would be decisive against us for ever, and to such a judgment you cannot be party.[5]

Nevertheless the averment was received, and *Malberthorpe* traversed it

Toudeby prayed aid of the heir.

Bereford, C.J., would not grant it; for, if aid were granted of the heir, who is within age and in ward to the King, the heir would come into court and pray his age, and thus he would delay the demandant's action by the nonage of one whose nonage is the very cause of action.[6] So [the aid][7] was not granted.

{*Toudeby*[8] waived the voucher and answered over for the executors of [Brakenbergh], and said that the ancestors of [the heir] held the manor of [Glentham] by the service of three knight's fees of Sir John Wake, husband of Joan, which Joan leased the wardship

[1] Stat. West. I. c. 40, which gives the right to counterplead a voucher.

[2] One book says 'damages which are only a chattel.' But is not the wardship the chattel?

[3] This sentence from one book only.

[4] No, the defendants are not the executors of the dead tenant, whose real name was Robert. Confusion has been caused throughout this report by the substitution of *Johan* for *Johane*.

[5] This argument is better stated in the third report.

[6] This looks like a reporter's mistake. The infant who was prayed in aid was not the infant whose wardship was in demand.

[7] The books say 'the age.'

[8] This end of the case from one manuscript.

lessa taunqe etc., einz [1] qe nule terre ne tenement tendr[ent] del demandant ou de ses ancestres. Et demandoms jugement, e s'il veut dedire, prest etc.

Herle. C'est un bref de droit de garde ; e eux a pleder si haut a trier le droit de la garde par un tiel r[espouns] de lour feble estat jeo crey, tut voleit la partie soeffrir, il ne sereit mie recevable de court, qar par cas ceo sereit meschief a nous si un enqueste se [2] joindreit entre nous a trier la priorité de feffement [3] a ceo ne put executour estre partie etc.

Ber. Que ben etc. ne se mowe. Ne portez vous cesti bref ver eux e dites qe la garde a vous appent et eux vous deforcent ? E eux r[espondent] qe la garde appent nent a vous per racionem predictam.

Ber. Volez user ceste accion ver eux ?

Malm. Plus naturelement sereit pur eux a prier eide qe fere eux partie de si haut r[espouns].

Hervi. De qui prierent il eide ? De Thomas fyz e heir Jon de Wake qe est en la garde le Roi, e issi targerent vostre accion tanqe a son age ?

Et ultimo fuit ad patriam super prioritatem feoffamenti etc.}

20c. HEYLING *v.* RABEYN.[4]

Thomas de Haubog [5] porta son bref de garde vers R. et B. executours John de B. et dit q'a tort ly deforcent la garde du corps W. fitz et heir R. de W. qy garde etc., par la reson qe R. piere W. tint de ly par homage, fealté, escuage, etc.

Toud. R. et B. executours avantdiz vous respoynent et dient qe Jon de Ware vendi la garde avantdite a Jon qe executours nous sumes et obliga ly a la garrantie. Le quel Jon est mort. Par qey R. et B. executors avantdiz vouchent a garrant F. et R. executors du testament Jon Ware parmy ceu fet, le quel fet voleit qe Jon Ware avoit lessé la garde etc. et obliga ly et ses heirs a la garrantie a Jon de B. et a ses heirs et a ses assignz.

Pass. A ceu voucher ne devez estre receu, qar il vouche par vertue d'un fet, et le fet ne lye poynt les executors, et demandoms jugement.

Toud. Qey est ceo a vous ? Qaunt les executors vendront en court dient ceo q'ils voderont pur eux. Et prioms qe nostre voucher soit resceu.

[1] en *Y.* [2] ceo *Y.* [3] *Ins.* qar (?). [4] This third version from *R.* [5] *Or* Hanbog *R.*

to [Brakenbergh] until [the heir's full age [1]], before [the heir's ancestors] held anything of the demandant or his ancestors. Judgment, and if they will deny, ready etc.

Herle. This is a writ of right, and I do not believe that, even if the other party would suffer it, the Court would receive them, with their feeble estate, to plead so high as to try the right of the wardship; for it might be a hardship upon us if an inquest were joined to try the priority of feoffment, since an executor could not be party to that [issue].

Bereford, C.J. The wise man does not move.[2] Do not you bring this writ against them and say that the wardship belongs to you and that they deforce you? They answer that it does not belong to you for the aforesaid reason.

Bereford, C.J.[3] Will you maintain this action against them?

Malberthorpe. It would be more natural for them to pray aid than to give so high an answer.

Stanton, J. Of whom should they pray aid? Of Thomas son and heir of Joan Wake, who is in ward to the King? That would delay your action until his full age.

In the end they went to the country as to priority of feoffment }

20c. HEYLING *v.* RABEYN.

[William of Heyling] brought a writ of ward against R. and B., executors of [Joan of Brakenbergh], and said that wrongfully they deforce the wardship of the son and heir of [one Robert], whose wardship belongs to [the demandant] by reason that the heir's father held of him by homage, fealty, and escuage etc.

Toudeby. The said executors answer you and say that one [Joan Wake] sold the wardship to [their testator] and obliged herself to warranty. And, the [warrantor] being dead, the executors vouch the executors of the will of [Joan Wake] by this deed, which states that [Joan Wake] leased the wardship etc. and bound herself and her heirs to warrant [Joan of Brakenbergh], her heirs and assigns.

Passeley. To this voucher you ought not to be received; for the voucher is by virtue of a deed which does not bind executors, and we demand judgment.

Toudeby. What is that to you? When the [vouched] executors come into court they can say what they please for themselves.

[1] Conjecture.

[2] Conjecture. It seems to us that Bereford quotes some proverb, and *mouue* may come from *mouver*, commonly used for *mouvoir*. The meaning seems to be that you brought this upon yourselves.

[3] Perhaps after a pause.

Herle. A nous est a vere qe vostre voucher seit recevable de court, qe nous avoms par statut qe si bref seit porté vers un tenant, et le tenant vouche a garrant un tiel, et le demandant le voile contrepleder qe celi q'est vouché n'avoit etc., statut hoste le tenant de ceu voucher. Auxi dioms nous par de sa; de pus qe vostre voucher est hors de comune ley et vous ne mostrez poynt d'especialté qe vous eyde, qe le fet qe vous mettez avant n'estent pas a les executours d'une part et d'autre. Par qey etc.

Wilby. Si John de Ware fut en pleine vye, nous ly vouch[erioms] a garrantie, et par ceu fet serreit il lyé. Par qey il nous semble, depus qe le testatour serreyt lyé, qe les executours qe representent son estat deivent estre liez.

Berr. Fallit regula si vous l'avez en vostre livre.

Rostone. Austrement ne pons voucher si non par vostre fet, et issint avoms fet.

Berr. Unqes en ceste court ne vey jeo un tiel voucher. Mès dites autre chose.

Toud. La ou vous demandez la garde du corps W. par la reson qe R. son piere tint de vous etc., la vous dioms qe R. son piere tint de Jon de Ware et Johane sa femme par plus eyné feffement qe de vous. Prist etc.

Herle. A ceste averement n'avendrez mie, qar il ne put l'estat Johane pleder. D'autrepart, c'est[1] un bref de dreit de garde. A eux donqes a pleder en le dreit, qe nul estat ne unt, la ley ne seoffre poynt. Dount, depus qe c'est un bref de dreit en sa nature et trenche par toux jours, ou si ceste averement q'il tendent fut receu, jugement final se freit vers nous, mès jugement pur nous ne freit si noun pur le temps les executours, issi qe owel jugement ne se freyt pas d'une part et d'autre; par qey, depus le heir Jon de Ware avereit sa action qaunt il vendreit a son age, n'entendoms mye qe a tiel etc.

Toud. Autre respons ne pons avoir etc.

Malm. Pur qey n'euset vous ordiné vostre fet issint qe vous porriez avoir voucher vers autrez? Et pur ceo 'discas alias.'[2]

Berr. Donqe volet vous recoverer vers eux sanz avoir r[espons] a vostre demande, qar autre r[espons] ne autre averement ne pount il avoir. Et pur ceo receyvez l'averement si vous volez.

[1] est *R.* [2] addistas al' *R.*

Herle. It is for us to see that your voucher is receivable by the Court. For we have it by statute that if a writ be brought against a tenant, and he vouch to warranty, and the demandant desire to counterplead the voucher by saying that the vouchee had nothing etc., then statute ousts the tenant from the voucher. And so in this case, since your voucher is outside the common law, and you show no specialty that aids you, for the deed that you produce extends not to executors on either side. Therefore etc.

Willoughby. If [Joan Wake] were alive we could vouch her to warranty and by this deed she would be bound. So it seems to us that, as the testator was bound, the executors, who represent her estate, should be bound.

Bereford, C.J. If you have that rule in your book, it is one that [sometimes] fails.

Ruston. We cannot vouch otherwise than by your deed, and that is what we have done.

Bereford, C.J. Never in this court saw I such a voucher. So plead over.

Toudeby. Whereas you demand the wardship of the body of [this heir] by reason that his father held of you, we tell you that his father held of John Wake and Joan his wife by older feoffment than that by which he held of you.

Herle. To that averment you cannot get; for you cannot plead about Joan's estate. Moreover, this is a writ of right of ward, and the law will not suffer them to plead in the right who have no estate. This writ is in its nature a writ of right which is conclusive for all time; and, if this averment were received, a final judgment might be made against us; but a judgment in our favour would only hold good for the time of the executors; so that the judgments in the two cases would not be equal. Therefore, since the heir of Joan Wake would still have his action against us when he came of age, we do not think that [the executors can be received to this averment].

Toudeby. Other answer we cannot give etc.

Malberthorpe. Why did you not have your deed so drawn that you could vouch others? Be wise another time.[1]

Bereford, C.J. So you [for the demandant] think to recover without having an answer to your demand, for [the executors] can offer no other answer or averment. Therefore, if you please, receive the averment.

[1] The phrase 'Discas alias' occasionally appears in our books. On one occasion we have seen 'Discas alias ut cautius negocieris.' This looks like the 'moral' of some current fable.

Herle. Q'il tient de nous par priorité de feffement. Prist etc.

Toud. A ceo ne poums estre partie sanz le heir Jon Ware, et prioms eyde de ly.

Berr. Priez vous eyde del heir del houre q'il est en la garde nostre seignour le Roi par reson de soun nounage?

Malm. Nous jugement, depus qe vous mesme avez tendu ceste averement et ore le refuset.

Toud. Nous le voloms.

Ideo ad patriam.

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 167d, Linc.

Peter de Rabeyn, Thomas de Blesebi, and John de Yerdeburgh, executors of the testament of of Joan de Brakenbergh, in mercy for divers defaults.

The same executors were summoned to answer William de Heyling of a plea that they render to him John son and heir of Robert de Brakenbergh, whose wardship belongs to [the demandant], for that Robert held his lands of him by knight's service. [The demandant], by Robert de Maundeville his attorney, says that the said Robert, the heir's father, held of him the manor of Brakenbergh [1] by homage, fealty, and the service of two knight's fees, to wit, to the King's scutage of forty shillings when it shall occur, six marks, and so in proportion; and that of this homage and fealty [the demandant] was seised by the hands of Robert; and that [Robert] died in [the demandant's] homage; and that for this reason the said wardship belongs to [the

21A. CANTERBURY (ARCHBISHOP OF) *v.* PERCY.[2]

Replegiari, ou il avowa en iiij. villes pur homage.

Replegiari, ou le avowaunt fut seisi dil escowage et meynteint s'awouerie pur homage et pur feauté arere, pur ceo qe escowage atret a ly homage et feauté.

Nota si jeo graunte les serviz moun tenaunt a *B.*, quel tenaunt unqes attorna a moi de ses services: pus le tenaunt fait fealté: *B.* n'avendra jamès a les autres serviz par force de lei, qar il ne fut unqes seisi ne soun feffour de nul manere serviz, qar fealté n'est pas serviz ne ne put serviz a li atrere.

Robert Ercevesqe de Cantewarbury porta son *replegiari* vers Henri de Percy etc. Henri avowa la prise bone etc. par la reson q'il tint de ly iiij. villes, nomement etc., par etc., et pur homage arrere etc. si avowe etc.

[1] Mod. Brackenborough, near Louth. [2] Text of this first version from *R.* Headnotes from *B*, *Q*, and *P*.

Herle. He held of us by priority of feoffment. Ready etc.

Toudeby. To that we can be no party without the heir of [Joan Wake], and we pray aid of him.

Bereford, C.J. Would you pray aid of the heir when he is in ward to the King by reason of his nonage?

Malberthorpe. We demand judgment, since you yourself tendered this averment, and now you refuse it.

Toudeby. We accept it.

Therefore to the country.

Note from the Record (*continued*).

demandant]; and that the said executors unjustly deforce him: damages, two hundred pounds.

The executors, by Walter of Crawden, their attorney, after formal defence, say that [the demandant] can claim nothing in the wardship of the said heir; for they say that one Joan, sometime wife of John Wake, granted and demised to the said Joan de Brakenberk, whose executors they are, the said wardship, to hold until the lawful age of the said heir; and that Robert, the heir's father, and his ancestors etc. held the manor of Glentham in the said county of John Wake and Joan his wife and the ancestors of John (*sic*), by homage and fealty and the service of three knight's fees, before Robert or his ancestors held the manor of Brakenbergh of [the demandant] and his ancestors by the said service of two knight's fees; and thereof they put themselves upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of St. John Baptist.

21A. CANTERBURY (ARCHBISHOP OF) *v.* PERCY.[1]

(1) Although a vill is not (like a manor, carucate or acre) one of those proprietary units that can be demanded by action, *semble* that an avowry may be good though it alleges the tenancy to be of four vills. (2) An allegation of seisin of escuage with an allegation of tenure by knight's service will support an avowry for homage and fealty. (3) The connexion between avowry and disclaimer discussed. (4) The amendment of an avowry by the advice of the Court without judgment exemplified.

Robert Archbishop of Canterbury brought his replevin against Henry de Percy etc. Henry avowed the taking good etc. for the reason that he held of him four vills, to wit etc., and for homage arrear etc. he avows etc.

[1] This case is Fitz. *Avowre*, 188. Proper names from the record.

Pass. A tiel avowerie ne deit il avenir, qe si R. vousit desclamer il ly covendreit desclamer en certeyn, cum par manier, qarué ou vergé ou certeynz acres, et ceo ne put il fere, ne R. ne serreit en la forme q'il avowent receu a desclamer.

Herle ad idem. S'il declamast[1] ceste avowerie, et H. portast bref de dreit selonc le desclamer, vous n'averet pas bref 'quod reddat ei villam' nec 'villatam,' mez 'manier' ou 'carué' etc. Et si vous deiset 'precipe quod reddat manerium' vel 'unam acram' etc. covendreit d'averer vostre actioun par recorde solom le desclamer. Mès par le desclamer ne put il estre averé, qe le desclamer ne le recorde pas. Ad idem en bref *de consuetudinibus et serviciis* dirreit 'quod faciat ei recta servicia et consuetudines que facere debet[2] et solet de libero tenemento etc.' Sic hic, covent dire q'il tint de vous par manier, carué ou vergé etc. Jugement de la forme del avowerie.

Hertepol. Si jeo avowe sur J. par la reson q'il tynt de moi un manier ove les apportenances, et J. desclamast, et jeo portasse mon bref de dreit sur le desclamer d'une vergé de terre de mesme le manier et tendy suete et dereine, ne porai jeo averer ma actioun par le desclamer et par recorde? Et sic hic.

Scrop ad idem. Jeo vous feffe d'une ville a tenir de moi par certeyn services. Jeo seisi des services. Les services sont arrere. Jeo fray l'avowerie par la reson qe vous tenez de moi un ville. Sic hic. Ou si iiij. villes seient en un manier. Et desicom nous avoms esté seisi de services pus le temps et en le temps le Roi Richard et Jon et il en la forme les ad tenu, jugement.

Fris. Si jeo vous ey doné avant statut toux les tenemenz qe jeo ay en Fris[keney] a tenir de moi par certeyn services, et mon heir avowe, covendreit dire qe vous tenez de ly par vergé ou par acre, noun pas countre esteant la forme du feffement. Sic hic: coment q'il tiegne par villes, com jeo ne grant pas, covent avower par carué ou manier ou en certeyn.

Et l'avowerie fut tiel qe l'Ercevesqe tient de ly iiij. villes par homage et fealté et un fee de chivaler et demi, des quex services H. fut seisi, scil. de l'escuage parmy la mayn son predecessour etc. Et pur ceo qe le homage et la fealté etc.

[1] *Ins.* selonc la forme de *Conj.* [2] debent *R.*

Passeley. To such an avowry he cannot get; for if [the plaintiff] wished to disclaim, he would have to disclaim with certainty, as for a manor, carucate, virgate or certain acres, and that he could not do here: he could not be admitted to disclaim in the terms of this avowry.

Herle on the same side. If he disclaimed according to the form of this avowry, and [the avowant] had to bring his writ of right in conformity with the disclaimer, he could have no writ for a vill or a township: he would have to say manor, carucate, or the like. And if he said 'command that he render a manor' or 'an acre,' then he might be called upon to aver his action by the record of the disclaimer; but the disclaimer would not aver his action, for it does not record it. So, too, in a writ of customs and services one must say 'that he do the right services and customs that he ought and is wont to do for his free tenement etc.'[1] So here you must say that he holds of you a manor, carucate, virgate or the like. Judgment on the form of the avowry.

Hartlepool. If I avowed upon a man for that he holds of me a manor with the appurtenances, and he disclaimed, and I brought my writ of right upon the disclaimer for a virgate of land of the same manor and I tendered suit and deraignment, could I not have my action upon the disclaimer and the record? So here.

Scrope to the same effect. I enfeoff you of a vill to hold of me by certain services. I am seised of the services. The services are arrear. I shall make an avowry upon you as holding of me a vill. So here. And so if four vills form one manor. And as we have been seised of the services since the reigns and in the reigns of Richard and John, and he has held in form aforesaid, we pray judgment.

Friskeney. If before the Statute [*Quia emptores*] I have given you 'all the tenements that I have in Friskeney' to hold of me by certain services, and my heir avows, he will have to say that you hold virgates or acres, notwithstanding the form of the feoffment. So here. Even if he holds by vills, as I do not admit, the avowry must be for carucates or manors or otherwise in certainty.

And the avowry was this, that the archbishop holds of him four vills by homage and fealty and [as] one and a half knight's fees, of which services [the avowant] was seised, to wit of escuage by the hand of [the plaintiff's] predecessor,[2] and for that the homage and fealty [were arrear, he avows etc.]

[1] An omission may be suspected. In his count the demandant would have to name a quantity, and Herle's argument must be based on this.

[2] Other reports say by the plaintiff's hand.

Fut dit par la court q'il esclareysent lour avowerie. Et diseynt q'il tient de ly ut supra les iiij. villes qe sont dedens le manier de C.

Pass. Uncore demandoms jugement de l'avowerie, qar la ou home veut fere avowerie sur tenant pur services arere, covent q'il face pur services qe fet tenant. Mès ore n'ad il pas fet ne lyé la seisine si noun del escuage, qe ne fet pas tenant ne qe n'est pas service. Jugement.

Denum. Nous avoms [1] dit qe nous avoms esté seisi del escuage, de qel homage et fealté sont dependaunz. Jugement.

Pass. Si vous portisez vostre bref de costumes et de services, covent a dire en countaunt [2] q'il eit esté seisi des services; et ensement le bref dit 'ut in homagiis, releviis, redditibus, arreragiis [3] et aliis.' Issint par les arrerages [4] suppose q'il fut seisi. Sic hic.

Berr. Parmy cele parole q'il dit en avowaunt q'il tient de ly par un fee de chivaler et demi, si suppose il q'il tient de ly par homage et fealté et escuage. Dount, depus q'il ad lyé la tenance en sa persone et la seisine du principal, scil. del escuage, semble qe l'avowerie est bone; qar s'il est [5] lyé la seisine de homage et fealté, l'avowerie serreit assez bone. Ergo hic. Et agardoms [6] q'il deisent outre.

Et diseynt hors de son fee. Prist etc.

Et alii econtra.

Et sic ad patriam.

21B. CANTERBURY (ARCHBISHOP OF) *v.* PERCY.[7]

Robert Ercevesqe de Caunterburie porta le *replegiari* vers H. de Percy etc.

Henri avowa pur la resoun qe mesme celuy Evesqe [8] tient de luy iiij. villes par homage, fealté, et par escuage etc.,[9] des queux services il fust seisi par my la mayn mesme celuy Ercevesqe com etc., forspris del homage et de la feaulté, et pur le homage et la fealté ariere si avowe il etc.

Herle. Nous n'entendomps mye qe a tiel avowrie devetz estre r[espoundu], qar vous avet avowé par la resoun qe l'Ercevesqe tient de vous iiij. villes par certeinz services, et vous n'avetz pas lié la

[1] avowoms *R.* [2] covenaunt *R.* [3] arr' *R.* [4] arr' *R.* [5] *Corr.* eust. [6] agardez *R.* [7] Text of this second version from *A*; compared with *D*, *Q*. [8] Ercevesqe *D*, *Q*. [9] *Ins.* scilicet a xl. s. qaunt lescou court etc. et a plus etc. *Q*.

It was said by the Court that they should explain their avowry, and they said as above that [the plaintiff] held the four vills [adding that] they are within the manor of C.

Passeley. Still we pray judgment of the avowry, for where one wishes to avow upon a tenant for services arrear it should be [by reason of] such services as make a tenant. But this he has not done, having laid a seisin of escuage only, which does not make a tenant and is not a service. Judgment.

Denom. We have said that we have been seised of the escuage, and from this the homage and fealty are dependent. Judgment.

Passeley. If you brought your writ of customs and services, you would have to say in counting that he has been seised of the services, and the writ would say 'as in homages, reliefs, rents, arrears and other services'; and so by this word 'arrears' you would suppose that you were seised. So here.

Bereford, C.J. By these words in his avowry 'he holds of him by a knight's fee and a half,' he gives it to be understood that [the plaintiff] holds by homage, fealty, and escuage. So since he has laid the tenancy in the person [of the plaintiff] and the seisin of the principal [thing], to wit the escuage, it seems that the avowry is good; for it would have been good if he had laid the seisin of the homage and fealty. So here. And we award that you plead over.

And they said 'outside his fee: ready.'

Issue joined. And so to the country.

21b. CANTERBURY (ARCHBISHOP OF) *v.* PERCY.

Robert, Archbishop of Canterbury, brought replevin against Henry de Percy.

Henry avowed for the reason that the archbishop holds of him four vills by homage, fealty, and escuage,[1] of which services he was seised by the hands of this same archbishop, saving homage and fealty, and for homage and fealty arrear he avows, etc.

Herle. We hold that to such an avowry you should not be answered; for you have avowed because the archbishop holds of you four vills by certain services, and you have not laid the tenancy in

[1] One book shows that the amount of the scutage was mentioned.

tenaunce l'Ercevesqe en certeyn, q'est cause del avowrie, com a dire qil tient le manier de tiel ou [1] une acre [2] de terre ou un bové de terre ou taunt des acres.[3] Jugement, si a tiel avowrie en noun certeyn etc.[4]

Scrope. Nostre avowrie est accordaunt a nostre tenaunce,[5] qar il ne tient pas de nous par maniers, einz fait [6] par villes,[7] et com villes passerent hors de la seisine l'auncestre [8] H.; et come en noun des villes avoms [9] esté seisi de les services [10] dount memorie n'est; et si nous avowsoms [11] par la resoun q'il tient taunt des acres ou taunt de bovés etc., ceo serroyt mens [12] en certeyn, qar nous ne savoms com bien des acres ne com bien des bovés sount en la ville.[13] Mès nous avoms dit q'il tient de nous les villes qe compreignent [14] acres, bovés etc., et c'est plus en certeyn.

Herle. Si l'Ercevesqe vousist declamer, il convendreit avoir bref acordaunt al avowrie, a demaunder le demene par le desclamer, mès si homme demaundast par le bref iiij. villes, ceo n'averetz [15] mye en la chauncellerie. Donqe par my l'avowrie n'averetz mye [16] actioun a demaunder les tenements en demene.

Scrop. Si jeo enfeffe un homme de une vacherie en [17] la comune etc. a tenir de moy et de mes heirs etc., s'il descleym etc., jeo n'averai [18] pas bref 'quod reddat vacariam,' [19] mès 'quod reddat unum mesuagium etc.;' et si avowrei jeo pur ceo q'il tient de moy une vacherie etc. Auxint par decea.

Pass.[20] Si vous ne poetz avoir bref a demaunder le demene par le desclaimer le tenaunt solom ceo qe l'avowrie est fait, l'avowerie est malveys. Sic hic.

West. S'il vousist desclamer en les villes auxint qe vous avet avowé, et [21] vous recoverisset solomc l'avowrie par le desclaimer, issint averetz [22] vous les villes enterement, ou par cas il n'est mye tenaunt de la tierce partie. Par qei l'avowrie est malveys etc.

Hervi. Vous avet avowé sur l'Ercevesqe par la resoun q'il tient etc.[23] iiij. villes, scil. par homage et iiij.[24] fees de chivaler etc. Veez sy vous voletz esclariser [25] coment il tient de vous etc. Mès nepurqaunt nous ne dioms mye qe l'avowrie est malveys.

[1] oue *Q.* [2] carue *Q.* [3] *Ins.* en iiij villes *D*, *Q.* [4] *Om.* etc. *A.* [5] a la tenaunce lercevesqe *D*, *Q.* [6] fit *Q*; *om.* fait *D.* [7] ville *D*, *Q.* [8] *Ins.* Sire *D*, *Q.* [9] *Om.* avoms *A*; *ins.* *D*, *Q.* [10] *Ins.* du temps *D*, *Q.* [11] avowassoms *Q.* [12] meyns *Q*; mayns *D.* [13] les villes *Q.* [14] comprent *D.* [15] naveroms *D*, *Q.* [16] navera my homme *D.* [17] oue *D*, *Q.* [18] il navera *Q.* [19] jeo naverei poynt de bref a demander vacher' *D.* [20] *Om.* this speech *D.* [21] *Om.* et *D*, *Q.* [22] recoveretz *Q*; reaveretz *D.* [23] tient de vous *Q.* [24] iij. *Q.* [25] esclarisier *D.*

the archbishop with certainty, and the tenancy is the cause of the avowry. You have not, for example, said that he holds such and such a manor, or a [carucate], or a bovate of land, or so many acres. Judgment, whether to an avowry that is so uncertain you ought to be answered.

Scrope. Our avowry accords with the tenancy; for he does not hold of us by manors; he holds by vills, and as vills they passed out of the seisin of our ancestor, and as of vills we have been seised of the services from time immemorial. Were we to avow for the reason that he holds of us so many acres or so many bovates, that would be less certain; for we know not how many acres or how many bovates there are in the vills. We have said that he holds of us vills, and they comprise acres, bovates, etc. Really that is more certain.

Herle. If the archbishop wished to disclaim, then it would behove the present avowant to have a writ for demanding the demesne by reason of the disclaimer, and that writ should accord with the avowry. But one could not get in the Chancery a writ demanding vills. Thus by means of this avowry you could not come to an action to demand the tenements in demesne.

Scrope. If I enfeoff a man of a dairy-farm (*vacherie*) with common etc.[1] to hold of me and my heirs, then if he disclaims, my writ will not say 'that he render a vaccary,' but that he render a messuage, and yet I may avow upon him as holding a vaccary.

Passeley. If you cannot have such a writ to demand the demesne on a disclaimer by the tenant as will accord with your avowry, then your avowry is bad. Such is the case here.

Westcote. If [the plaintiff] wished to disclaim tenancy of the vills in accordance with your avowry, and you recovered upon the disclaimer in accordance with your avowry, in that way you would get the vills integrally, whereas it may be that [the plaintiff] does not hold a third of them. Therefore the avowry is bad.

Stanton, J. You have avowed upon the archbishop for that he holds of you four vills, to wit by homage and [by the services of] four knight's fees, etc. See whether you cannot explain how he holds of you. At the same time we do not say that the avowry is bad.

[1] Or 'in the common etc.,' but we are not very certain as to what is here meant by a *vacherie*. See the parallel passage in the third report of this case (below p. 32).

Hert. Nous dioms q'il tient de nous iiij. villes *ut supra* qe sount le maner de Evkinges[1] com en demene, et en service et en almoigne[2] par homage, fealté etc.; et pur le homage arere si avowe il etc.

Pass. Nous avoms mys avaunt excepcioun qe chiet en ley a la fourme del avowrie, sur qei nous demorroms; par qei entendomps qe esclariser[3] l'avowrie[4] ne deit il avenir.

Hervi. Nous vous dioms qe vous dites[5] outre.

Herle issit d'enparler, et revient et dit :[6] Vous veez bien coment il avowent sur nous etc. et il dit q'il mesme fust seisi del escuage tantum,[7] qe ne fait mye tenaunt.[8] Et desicome il n'ad mye dit qe luy ou ses auncestres furent seisi del homage ou de la faulté[9] l'Ercevesqe ou ses predecessours, qe fait verrai tenaunt, jugement etc.[10]

Hert. Nous avoms dit qe vous tenet de nous iiij. villes par escuage[11] qe naturelement attret a luy homage et[12] fealté; dount nostre avowrie est asset bon.

Herle. Nous pledomps a la forme, qe seisine del escuage tantum ne fait mye tenaunt, einz fait homage et fealté verray tenaunt; et depus q'il n'ad mye dit q'il est seisi de la fealté ne del homage qe fait tenaunt, jugement etc.

Berr. S'il deit[13] q'il fust seisi del homage,[14] et vous *econtra*, et trové fust qe nient seisi cherreit[15] l'avowerie (*quasi diceret non*) ?

Herle. Si H. de Porte[16] purchaca les services, et il nyent seisi del homage ne de la fealté, il ne porra mye par[17] la seisine del escuage bone avowrie fair sur l'Ercevesqe pur la feauté.[18]

Malm. S'il fust a demaunder les services par bref de costume[19] et des services, il covendreit lier la possessioun par aschuny mayn. Eadem racione hic.[20]

Berr. L'avowerie est assetz bon.

Pass. Hors de soun fee. Prest etc.

Et alii econtra. Ideo etc. xij.

[1] Colyngh' *Q*; Cokyng' en Deuon' *D*. [2] en demene come en demeine et en service com en service et en aumoigne com en almoigne *Q*. [3] *Ins.* ore *D*, *Q*. [4] *Ins.* ceo *A*; *om. D*, *Q*. [5] dietz *D*, *Q*. [6] Pass. Herle isserent denparler et revyndrent et disoyent *Q*; *sim. D*. [7] *Om.* tantum *D*. [8] *Ins.* etc. *D*, *Q*. [9] *Ins.* qe fait verroi tenaunt *Q*; *sim. D*. [10] de la forme de cest avowrie *Q*. [11] *Ins.* et nous sumes seisi del escuage *D*, *Q*. [12] *Om.* et *A*. [13] deist *Q*. [14] del escuage *Q*. [15] chaireit *Q*; cheireit *D*. [16] Percy *D*, *Q*. [17] pur *Q*. [18] *Ins.* set de aliis serviciis ne put il mie destreindre pur la fealte q. d. sic. *Q*; *sim. D*. [19] customes *D*, *Q*. [20] *Ins.* a ceo plee qe est possessorie etc. il coveynt lier la possession etc. par qei etc. *Q*; *sim. D*. End of case, *A*; residue from *Q*; *sim. D*.

Hartlepool. We say that he holds of us four vills as above, which are the manor of Cocking, in demesne,[1] in service and in almoin by homage, fealty, etc., and for homage arrear we avow etc.

Passeley. We have put in a plea in matter of law to the form of the avowry, and thereon we demur, and therefore we do not think that he can be admitted to clear up his avowry by explanations.

Stanton, J. We tell you [for the plaintiff] to plead over.

Herle[2] went out to imparl and came back and said: You see how they avow upon us etc. and say that he was seised only of the escuage. That will not make a tenant. And since he has not said that he or his ancestors were seised of the homage or fealty—[which would make a very tenant]—of [the plaintiff] or his predecessors, we pray judgment.

Hartlepool. We have said that you hold of us four vills by escuage which naturally draws to itself homage and fealty.[3] So our avowry is good enough.

Herle. We are pleading to the form of the avowry and saying that seisin of escuage by itself does not make a tenant, while homage and fealty make a very tenant. So we pray judgment, since he has not said that he was seised of homage and fealty which make a tenant.

Bereford, C.J. If [the avowant] said that he was seised of the homage,[4] and you said the reverse, and it was found that he was not seised thereof, would that bring his avowry to the ground? Not so.

Herle. If [Percy] purchased the services and was not seised of the homage nor of the fealty, he would not be able to make a good avowry for the fealty by reason of a seisin of the escuage.

Malberthorpe. If he were demanding the services by writ of customs and services, he would have to lay the possession by the hand of somebody. So here for the same reason.[5]

Bereford, C.J. The avowry is good enough.

Passeley. Outside his fee.

Issue joined. Therefore let twelve [jurors come].

[1] One book gives the full form: 'in demesne as in demesne, in service as in service and in almoin as in almoin.'

[2] Or 'Passeley and Herle.'

[3] Some add 'and that we were seised of the escuage.'

[4] One book says 'of the escuage.'

[5] One book adds: 'in this plea which is possessory he must lay the possession etc.; wherefore etc.'

21c. CANTERBURY (ARCHBISHOP OF) *v.* PERCY.[1]

Robert Arcevesqe de Canterburie porta son *replegiari* vers Henri de Percy[2] et altres nomez etc., et counta qe a tort avoit pris ses avers, nomement xij. boefs etc.

J. Denom.[3] Henri de Percy avowe la prise pur lui et pur les autres etc., et par la reson qe Robert Ercevesqe tynt de lui iiij. villes, scil. Colkn, Bretesmort, Morsewer et Cherding[4] par homage et fealté et par les services de iij.[5] feez de chivaler[6] et par la vinteime partie de un fee de chivaler et par l'escuage, scil. quant l'escu court etc., et par les services de clore xl. perches en son park de C. de son manier demene[7] que hure q'il fut garny a ceo fere etc. De quele escuage mesme cestui Henri seisi fut parmy la mayn l'avantdite R. Ercevesqe etc. com parmy etc. Et pur ceo qe homage l'Ercevesqe fut arrere le jour de la prise, si avowe il etc. endreit de x. boefs, et pur sa fealté arrere si avowe il endreit de ij. boefs, sur l'avantdit R. etc. et en son fee etc.

Pass. En chescun avowerie covent nomer[8] certein qauntité de tenance ou q'il tent par manere[9] ou par carué ou par acre. Et desicom il ne deit nent en avowaunt qe l'Ercevesqe tient *ut supra*, mès dit q'il tent iiij. villes, q'est en[10] nouncertein, demandom jugement de la forme de ceste avowerie.

Scrop. Sire, nous vous dioms qe l'Ercevesque et ses predecessors ount tenu ceux iiij. villes de nous et de noz auncestres du temps dont ny ad memorie, par ceux services *ut supra*, et par noun de ville, et noun pas par manier[11] ne par carué[12] etc.; et desicum l'avowerie est acordaunt a la tenance tenu[13] de antiquité par noun de ville etc.,[14] demandoms jugement si l'avowerie ne soit assez bon. Et d'autrepart al aunciene ley[15] homme soleit lever fines en cest court de villes; et, si en tiel cas homme fet avowerie acordaunt a la fin, n'entendez mye qe l'avowrie serroit bone (*quasi diceret sic*)? Qar ele deit a la nature de la tenance acorder. Par qei etc.

Malb.[16] Il covendreit qe vostre avowerie fut si certein qe, si nous desclamassoms a tenir de vous, qe vous pussez avoir vostre bref de

[1] *Vulg.* p. 65. Text from *M*; compared with *B*, *L*, *P*, *S*, *T*, *Y* (f. 155). [2] Praci *B*. [3] *Om.* J. *B*; Johane Deno' *S*. [4] No names, *B*, *P*; Cokkin, Brendesmore, Mersewere, et Cherdingtone *L*; Colk, Brettesmort, Moreswer et Cherdringe *S*; *sim. T*. [5] ij. *B*. [6] *Ins.* entier *B*. [7] de soun parke de soun manoir et de soun merym demene etc. *B*. [8] coveynt yl asommer *L*. [9] manoir *B*. [10] *Ins.* et *M*. [11] manoir *B*. [12] acre *B*. [13] come *B*; tenue *L*, *P*; tenuz *S*. [14] *Ins.* et *M*. [15] dautrepart dantequite *B*; auncienement *L*; a la comune ley *S*, *T*. [16] Pass. *B*; Malm. *L*, *P*, *S*, *T*.

21c. CANTERBURY (ARCHBISHOP OF) *v.* PERCY.

Robert, Archbishop of Canterbury, brought his replevin against Henry de Percy and others who were named; and he counted that wrongfully they took his beasts, namely twelve oxen etc.

J. Denom.[1] Henry de Percy avows the taking for himself and for the others etc., and for the reason that Archbishop Robert holds of him four vills, to wit Cocking, Linchmere, Minstead, and Selham, by homage and fealty and the services of three knight's fees and of a twentieth part of one knight's fee, and by escuage, to wit when the escuage runs at etc., and by the service of enclosing forty perches of his park at C. [with his own timber] whenever he shall be warned to do so etc.; and that of this escuage this same Henry was seised by the hand of the same Archbishop Robert etc. as by [the hand of his very tenant]; and for that the homage of the archbishop was arrear on the day of the taking, he avows in respect of ten oxen, and for that the fealty was arrear, for two oxen, upon the said Robert etc. and within his [the avowant's] fee.

Passeley. In every avowry one should name the quantity of the tenancy, as *e.g.* that he holds manors or carucates or acres. And since he does not say in avowing that the archbishop holds in this wise, but says that he holds four vills, which is uncertain, we pray judgment of the form of this avowry.

Scrope. Sir, we tell you that the archbishop and his predecessors have held these four vills of us and of our ancestors from time whereof memory runs not, and as vills, not as manors, carucates or the like; and, since our avowry is in accord with the tenancy held from of old by the name of 'vills,' we ask for judgment whether the avowry be not good enough. Moreover, under the old law[2] men were wont to levy in this court fines of 'vills'; and, if in such a case one were to avow in accordance with the fine, do not you think that the avowry would be good, for it ought to agree with the nature of the tenancy? Wherefore etc.

Malberthorpe. Your avowry ought to be so certain that, if we disclaimed holding of you, you could have a writ of right which would

[1] The two Denoms appear to be with Scrope and Hartlepool for the avowant. Herle, Passeley, Friskeney, Malberthorpe and Westcote are for the plaintiff.

[2] Or 'at the common law'; or 'of old time.'

dreit acordaunt al avowerie etc. Mès ceo n'averez jammès, qar homme ne trovera[1] nul tiel bref en la chauncelerie, com a dire 'precipe quod reddat iiij. villas.' Et demandoms jugement.

Scrop. Coment qe nous ne pooms avoir bref acordaunt al avowerie si vous desclamez, ceo ne prove mie qe l'avowerie n'est assez bon. Qar si vous tenez de moy une vacherie oue[2] une rode de terre,[3] et vous desclamez a tenir de moy, jeo ne troveray nul bref en la chauncelerie 'precipe quod reddat vacariam vel rodam';[4] et, nemye pur ceo, si poi jeo fere bone avowerie, par la reson qe vous tenez de moy une vacherie oue[5] une rode. Issint qe vostre r[espons][6] ne lie mye.

Herle. En chescun avowerie etc. si covent avoir certeinté de deux choses. Un est de la tenaunce etc. Un autre des services, par queux services l'avowerie est fet. Et la primere vous faut. Et demandoms jugement de la forme etc.

Scrop. Si jeo die qe vous tenissez de nous taunt des carués de terre en Kokyngtone[7] et taunt en autre ville et issint en la terce et en la quarte, unqore serroit possible qe vous tenez en mesmes les villes terre de un autre seignour. Et, depus qe nous dioms qe vous tenez de nous les iiij. villes, par les services de ij. feez de chivaler, par taunt est la court asserté qe les iiij. villes sount tenuz de nous enterement; et issint plus en certeine qe si nous deisoms qe vous tenez de nous par caruez. Et demandoms jugement etc.

Pass. Si Henri de Percy eust porté devers nous son bref de custumes et de services, le quel qe le bref fut en le *debet* et en le *solet* ou en le *debet* tauntsoulement, si covendreit q'il deisse en counte countaunt qe nous tenoms de lui un manier ou carué ou acre ou certein quantité, autre qe a dire qe nous tenoms[8] de lui iiij. villes; ou autrement son counte ne vaudreit rien. Auxi de ceste part.

Ber. Si Sire Henri eust ousté l'Ercevesque[9] de ces iiij. villes, et l'Ercevesqe portast[10] l'assise, qei mettreit il en sa counte?[11] Quatre villes? Noun freit. Mès freit taunt des caruez *ut supra.*

Denom. Sire, un est la ou tenement est en demande, et[12] la ou service est en demande en play de prise des avers; qar, si l'avowaunt face mencion de certein services issauntz des tenemenz en certein, assez suffit. Qar, del hure qe la tenance est tiel *ut supra*, et nous e noz auncestres etc. seisi de ces services etc. com de iiij. villes, jeo ne

[1] yl ny ad *L.* [2] ou *L, P, S, T.* [3] vacherie ou boverie de terre *B.* [4] *Om.* vel rodam *L*; *ins. P, S, T.* [5] ou *B, L, P, S.* [6] reson *L.* [7] Dolkenton *B*; Cokkingtone *L*; *sim. P*; Cokkynge *S*; Colking' *T.* [8] *Om.* de lui . . . tenoms *B.* [9] H. eust este heir *B.* [10] villes et il portast *B.* [11] sa pleynt *L, P, S, T.* [12] *Ins.* autre *P.*

agree with the terms of your avowry. But that you could never have, for one shall not find in the Chancery any such writ as 'Command that he render four vills.' So we demand judgment.

Scrope. Albeit if you disclaimed we could not have a writ agreeing with our avowry, that does not prove that the avowry is not good enough. For if you hold of me a *vacherie* [or *boverie*] of land, and you disclaimed the tenancy, I should find no writ in the Chancery for the render of a *vaccaria* [or *bovaria*];[1] but, none the less, I could make a good avowry upon you as holding of me a *vacherie* [or *boverie*]. So your argument is not binding.

Herle. In every avowry there should be certainty about two matters. One is the tenancy, and the other is the services for which the avowry is made. Here you fail in the first matter; and we pray judgment of the form etc.

Scrope. If I said that you held of me so many carucates of land in [Cocking] and so many in another vill and in a third and a fourth, still it might be that you held in the same vills land of another lord. And since we say that you hold of us the four vills by the service of three knight's fees, the Court is thereby certified that the whole of the four vills is held of us, and so there is greater certainty than if we said that you held carucates. We demand judgment etc.

Passeley. If Henry de Percy had brought against us his writ of customs and services, whether in the *debet et solet* or merely in the *debet*, he would have had to say in counting his count that we hold of him a manor or a carucate or an acre or a certain quantity, and not that we hold of him four vills; otherwise his count would be worthless. So here.

Bereford, C.J. If Sir Henry had ousted the archbishop from these four vills, and [the latter] brought the assize, what would he put in his count? Four vills? He could not do that. He would say so many carucates, as above.

Denom. Sir, it is one case where a tenement is to be demanded, and another where service is demanded in an action for beasts taken; for, if the avowant makes mention of certain services issuing from certain tenements, that is enough. And so since the tenancy is as stated above, and we and our ancestors etc. are seised of these services as for four vills, I cannot change the nature of the tenancy by means

[1] The terms used in this illustration are not very clearly given by our books. Perhaps the best translation for *vacherie* would be 'a dairy farm,' and this would be too uncertain a unit to be demanded in an action. And *boverie* might be rendered by 'grazing farm.'

pusse pas la nature de ma[1] tenance parmy m'avowerie chaunger. Et d'autrepart, a chalenger nostre avowerie par un possibilité de desclamer, qe par cas jammès ne prendra effect,[2] n'est pas, a ceo q'il semble, resceivable de ley. Et si ele preigne effect, et nous ne pussoms bref avoir etc., c'est lour avauntage demene, et[3] eux a[4] chalenger chose qe lour put tourner en avauntage et en prue,[5] a[6] ceo q'il dient, il[7] n'est mie covenable en lour bouche a dire,[8] qar il pount le plus hardisment desclamer.

W. Denom.[9] Si jeo lese certeinz tenemenz a un homme a terme de sa vie rendant a moy un certeyn par an, ja ne puist il desclamer, et si fray jeo bon avowerie sour luy. *Nihil ad propositum.*

Malb. Action qe entre[10] par desclamer deit estre naturelement averré par recorde. Le quel record se deit prendre en certeine. Mès si nous desclamoms et il portast un bref de dreit, s'action ne purreit par recorde estre averré. Qar le record serreit en nouncertein[11] la ou le record freit mencion de iiij. villes, il put estre q'il ad[12] en un ville plus de terre q'en un autre, et issint en nouncertein.

Hert.[13] Si vous desclamez etc. et nous portassoms nostre bref de dreit en demandaunt une carué de terre tauntsoulement en un des iij.[14] villes et[15] entrelessaunt le remenaunt et tendissoms suwte et dereign, ne serrai jeo r[espondu]?[16] Si serreit;[17] qar auxi com chescun parcele est chargé del enter de services, auxi est un action doné a demander chescun parcele par sey a ma volunté par vostre desclamer del enter. Par qei vous ne poiez dire qe nous n'averoms assez bon bref etc.

Scrop, Justice, ad idem. Si Henri portast son bref par vostre desclamer et demandast xx. acres[18] de terre en Cokyngton et les altres villes[19] et compreist tote la terre de iiij. villes en son bref, et vous deissez qe vous tenisez une partie de sa demande en les[20] villes avauntditz de un autre seignour le jour del desclamer,[21] la serreit il eidé par recorde, qe dirreit qe les iiij. villes sount tenuz de Sire Henri enterement. Ou[22] si vous deissez qe une partie de sa demande ne fut en les[23] villes avauntnomés contenu, la serreit il eidé par pays. Et[24] issint, quel r[espons] qe vous donez,[25] si ne serreit la court desceu ne la partie ja le plus. Par qei il semble qe l'avowerie est

[1] *Om.* ma *B*; la *L, P, S, T.* [2] avauntage ne effeit *B.* [3] *Ins.* a *B.* [4] avauntage par quei a *L.* [5] prou *P*; preu *S, T.* [6] *Om.* a *P.* [7] *Om.* il *P.* [8] *Om.* a dire *P.* [9] W. Denham *L*; *om.* this speech *M, P, S, T*; *ins. B, L.* [10] encrest *B*; acrest *L.* [11] *Ins.* qe *B*; et *L.* [12] yad *B, L.* [13] Hertepol *P.* [14] iiij. *B, L.* [15] *Om.* et *B, L, P.* [16] respoundu (*in full*) *T.* [17] serray *P, S, T.* [18] car' *B*; carues *L.* [19] *Om* en . . . villes *B, L.* [20] en une des *B, L.* [21] del clamer *L.* [22] Et *B.* [23] fuist pas compris deinz les *B.* [24] *Om.* Et *B, L.* [25] dorretz *B*; durreys *P.*

of my avowry. Again, a challenge of our avowry on the ground of the possibility of a disclaimer—which is a mere possibility—does not seem to me allowable by law. And suppose that this possibility take effect, and we cannot get a writ for the land in demesne, why, that is an advantage for them; and it does not lie in their mouths to object to our avowry on the ground that it may give them profit and advantage: they can the more boldly disclaim.

W. Denom. If I lease tenements to a man for his life, rendering to me yearly a certain rent, then he cannot disclaim and yet I can make avowry upon him. [So the argument from disclaimer is] nothing to the purpose.[1]

Malberthorpe. An action based upon disclaimer must by its very nature be averred by record. And the record must be certain. But if here we disclaimed, and he brought his writ of right, his action could not be averred by the record; for the record would be uncertain; for the record would make mention of 'four vills,' and it well may be that there is more land in one vill than in another; hence there would be uncertainty.

Hartlepool. If you disclaimed, and I brought my writ of right demanding one carucate of land in one of the vills and omitting the rest, and I tendered suit and deraignment, should I not be entitled to an answer? Yes, I should; for, just as every parcel is charged with the whole of the services, so by your disclaimer of the whole one action is given to demand any and every parcel at my pleasure. So you cannot say that we could not have a good enough writ.

Scrope, J. to the same effect. If Henry brought his writ upon your disclaimer and demanded twenty acres of land in Cocking and the other vills and comprised all the land of the four vills in his writ, and you said that on the day of the disclaimer you held of another lord part of what he now demands, he would be helped by the record, which would say that the four vills are holden entirely of Sir Henry. Or again, if you said that part of what he demanded was not in the four vills, then [a jury of] the country would help him. And thus, whatever answer you gave, the Court would not be deceived by it: still less[2] the [other] party. So it seems that the

[1] This speech is omitted in most of the books. The remark 'Not to the purpose' may be an annotator's comment on the preceding argument.

[2] Literally 'still more.'

assez certein. Et d'autrepart, jeo vous doune un grantdezime [1] place cum marreis ou bruere qe ne fut unqes acré ne vergé ne autrement assumé [2] en certein a tenir de moy par certeinz services : les services arrere etc. : jeo ne pusse pas dire qe vous tenez un manoir [3] par carués, bovés, ne par acres : serreit ceo bon lei de moy par taunt forsclore qe jeo ne pusse a ma rente avenir par voie de destresce, pur ceo qe la tenance etc.[4] la ou jeo fu seisi de ces services etc. ? Noun seit.[5]

Pass. En voz jugemenz seoms.[6]

Hervi.[7] Il covent qe vous facez vostre avowerie plus pleyn.

Denom.[8] Dont dioms qe l'Ercevesqe tent de nous le manier de Cokyngtone, a quel manier les iiij. villes etc. sount membres,[9] par les services *ut supra.*

Pass. A ceo ne devez avenir, qar nous avoms chalengé vostre avowerie en forme de ceo q'il [10] ne fut pas pleyne. Sur quele chalenge nous sumes demorrez en jugement. Et demandoms jugement si ore de fere vostre avowerie plus en [11] certeine ou plus pleine ou d'amender vostre avowerie en forme [12] ou nous avoms [13] chalengé etc., devez estre receu.

{*Scrope.*[14] Sire, nous veymes en l'avowerie entre Sire Robert de Tateshale et le Priour de Wymondesham qe Sire Robert fist avowerie par la reson q'il tint de lui une place q'est appellé Northwodegrove et autres tenemenz etc.

Bereford. Jammès ne verrez tiele avowerie resceu.

Scrope. Si le wast de la ville fuit baillé par le seignur a divers gentz a tenir par certeinz services, ceo n'est pas terre ne vergé de terre ne bové de terre, et si ne covent pas qe le seignur de la ville merche le wast par piez e mettre la quantité de piez en avowerie.

Frisq. Sire, il puet assigner la terre en acres et assumer com bien des acres il tient et issi faire bone avowerie.}

Hoc non obstante il fut chacé outre a respondre. Et issirent d'enparler et revindrent.[15]

Pass. Chescon avowerie sur verroy tenaunt pur rente arrere ou pur recogn[isaunce] [16] de rente service arrere fet [17] si covent estre lié par [18] tiele chose qe afferme priveté entre seignour et tenaunt. Mès il ne ount dit en avowaunt qe Henri de Percy ne nul de ses auncestres

[1] graunt *B, L, S, T.* [2] assume, assome, assoume *Cod.* [3] *Ins.* ne *L, S, T.* [4] tenance est en nouncerteyn *B, L.* [5] serroit *B, L, P, S, T.* [6] demorroms *B, L.* [7] A un autre jour Hervi *B, L.* [8] W. Denu' *B*; W. Denham *L.* [9] sont apportin' en membr' *B*; a purten' et membrez *L.* [10] qele *Al. Cod.* [11] est *M.* [12] *Ins.* la *L.* [13] lavoms *L, P, S, T.* [14] The following from *Y.* [15] *Om.* this sentence *B, L.* [16] reconyssaunz *S*; reconissaunc' *T.* [17] *Om.* ou . . . fet *L*; *om.* arrere fet *S, T.* [18] a *L.*

avowry is sufficiently certain. Moreover, suppose that I grant you some wide tract of marsh or heath, which never was laid out in acres or virgates nor otherwise summed in certain,[1] to hold of me by certain services, and suppose that the services fall arrear, I cannot say that you hold of me a manor [or] carucates or bovates or acres; but would it be good law that I cannot get to my rent by distress because, though I am seised of the services, the tenancy [is uncertain]? Not so.

Passeley. We submit to your judgments.

Stanton, J. (on another day). You [for the avowant] must make your avowry fuller.

W. Denom. We say that the archbishop holds of us the manor of Cocking, of which manor the four vills are members,[2] by the services aforesaid.

Passeley. To that you cannot get. We challenged the form of your avowry for not being full enough. On that challenge we demurred in judgment. We now pray judgment whether you can be allowed to amend the form of your avowry or to make it fuller or more certain after we have challenged it.

{*Scrope.*[3] Sir, we saw a case between Sir Robert of Tattershall and the Prior of Wymondham where Sir Robert avowed for the reason that the Prior held of him 'a place that is called Northwood-grove' and other tenements.

Bereford, C.J. Never will you see such an avowry received.

Scrope. If the waste of a vill were let by the lord to divers men to hold by certain services, that would not be 'land,' nor virgates nor bovates of land, and the lord of the vill would not be obliged to step out[4] the waste in feet and put a certain number of feet in his avowry.

Friskeney. He might assign the land by acres and sum up the quantity held, and so make a good avowry.}

None the less he was driven to plead over. They went out to imparl and returned.

Passeley. Every avowry upon a very tenant for rent arrear[5] ought to be laid in some matter that establishes a privity between lord and tenant. But they have not said in this avowry that either [the avowant] or any of his ancestors were seised of the homage or

[1] This seems to be the meaning of *assumé*.

[2] Or 'members and appurtenances.'

[3] From a manuscript which gives a lengthy report. This passage occurs before the long speech of Scrope, J.

[4] We take *merche* to represent *marche*, from *marcher* (to walk).

[5] Some books add 'or for a recognizance for rent service arrear.'

deust estre seisi del homage ou de la foialté par my nostre mayn ou de noz predecessors. Le quel homage et fealté sount[1] proprement tenaunce.[2] Et demandoms jugement de la forme de ceste avowerie.

J.[3] *Denom.* Nous avoms lié nostre avowerie par seisine d'escuage. Demandoms[4] jugement si nostre avowerie ne seit assez bon.

Herle. Vous deissez bien qe escuage astreit a lui homage la ou avowerie est fet en forme par reson de seignurye, qe[5] seisine de escuage ne doune mye seignurye. Qar jeo pose qe Sire Henri eust par cohercion et par sa seignurye accroché a lui les escuages et fut seisi un fietz ou deus fietz etc., cele seisine ne dorreit mye title de fere avowerie pur homage, ne cel escuage ne astrereit[6] a lui homage ne nul manere de seignurye. Par qei einz[7] ceo qe vostre avowerie soit de forme, il covent qe vous liez seisine del homage.[8] Et demandoms jugement.

Hertep.[9] Qe vous tenez de nous par escuage. Et demorroms en jugement.

Herle.[10] A ceo n'avoms mester en taunt com nous chalengeoms en forme etc.

Ber. Si trové fut qe vous tenissez de lui par escuage, tut ne fut il unqes seisi de homage, ne avereit il mye homage (*quasi diceret sic*) ? Ou s'il deit q'il fut seisi[11] del homage ou[12] son auncestre,[13] serroit ceo bon respons a traverser la seisine del homage sanz respondre a la tenance par fee de chivaler et[14] escuage (*quasi diceret non*) ?

Malb. Il y ount moultz des paroles ditz[15] qe la partie ne put traverser ; et nepurqaunt, s'il ne fut dit, la partie prendra avauntage. Sic ex parte ista.

Ber. Il vous dit qe vous tenez de lui le manier de Cokyngtone ove les appurtenances par les services de iij.[16] fees de chivaler, et service de chivaler veot[17] escuage et escuage homage etc. Par qei etc.

Malb. Dont piert il q'il purreit fere bon avowerie sanz ja dire q'il fut seisi de escuage, mès a dire tauntsoulement qe nous tenoms de lui par les services de[18] chivalerie, les queux astreynent[19] a eux escuage et escuage homage. Quod esset[20] inconveniens. Ergo illud ex quo sequitur.

[1] fount *P*, *T* ; funt *S*. [2] tenaunt *P* ; proprement privete entre seigneur et tenant *S*, *T*. [3] *Om.* J. *B*, *S*, *T*. [4] lie seisine descuage qe naturelement tret a luy homage et desicome vous nel dedites mye que vous ne tenetz par escuage *B* ; *sim. L*, *P*, *S*, *T*. [5] mes *B*, *L*. [6] trereit *B* ; attreroyt *L*. [7] en *B*. [8] *Ins.* et de feaute qe fount tenant *L*. [9] *Ins.* Grantez *B*, *L*, *S*, *T*. [10] *Om.* this speech *B*. [11] *Ins.* de ses predec' *B*, *L*. [12] un *S*, *T*. [13] *Om.* ou son auncestre *B*, *L*. [14] par *L* ; et par *P*, *S*. [15] Il y ad meinte chose dite *B* ; il sont plusors chosez a dire *L*. [16] iiij. *B*. [17] attret a lui *B*. [18] *Om.* de *M*. [19] treent *B* ; attreent *L*. [20] est *B*.

the fealty by the hand of us or of our predecessors. And the homage and the fealty, properly speaking, make the tenancy. We pray judgment of the form of this avowry.

J. Denom. We have made our avowry binding by asserting a seisin of escuage[1]; and we pray judgment whether the avowry be not good enough.[2]

Herle. True enough that escuage attracts homage where the avowry is made in [proper] form by reason of seignory; [but] seisin of escuage does not give seignory. I put case that Sir Henry by coercion and lordship accroached escuage to himself and was seised once or twice, that seisin would not give him title to make an avowry for homage, nor would that seisin draw to itself homage or any kind of seignory. Therefore, until your avowry be in [proper] form, it behoves you to lay a seisin of the homage.[3] We pray judgment.

Hartlepool. [Grant then] that you hold of us by escuage, and then let us abide judgment.

Herle. No need for that; for we have challenged the form [of the avowry].

Bereford, C.J. If it were found that you held of him by escuage, albeit he were never seised of homage, would he not have homage? (Expected answer: Yes.) Or if he said that he or his ancestor was seised of homage, would it be a good answer to traverse the seisin of homage without answering to the tenancy by knight's fee and the escuage? (Expected answer: No.)[4]

Malberthorpe. [In pleading] many words are said which the [opposite] party may not traverse, and yet, if they were not said, he could take advantage [of the omission]. So here.

Bereford, C.J. He says that you hold of him the manor of [Cocking] by the services of three knight's fees, and knight's service implies escuage and escuage homage. Wherefore etc.

Malberthorpe. If that be so, then it seems that he might make a good avowry without even saying that he was seised of escuage, by merely saying that we hold of him by military service which attracts escuage, and that escuage attracts homage. But the consequence is absurd, and so must be the hypothesis.

[1] Some books add 'which naturally draws to itself homage.'

[2] Some books add 'since you do not deny that you hold by escuage.'

[3] Some add 'and fealty, for they make the tenant.'

[4] In the margin of MS. *P* this doctrine seems to be disputed by 'Videtur quod sic, ut patet inferius per aliud placitum.'

Ber. Si vous tenez de moy par les services de v. s. par an, jeo seisi etc., vostre fealté arrere, jeo fray bone avowerie,[1] tut ne fu jeo mye ne mes auncestres unqes de ceo seisi parmy vostre mayn ne parmy la mayn vostre auncestre.

West. A ceo q'il semble,[2] unqore il covendreit lier seisine de fealté pur la forme: qe jeo pose qe jeo portasse mon bref *de homagio capiendo* vers Edmund Pass[eley], il me covendreit lier en mon counte countaunt qe Edmund ou[3] ses auncestres fussent seisi de mon homage ou de mes[4] auncestres, ou autrement etc.

Berr. Jeo vous say[5] graunt[6] gree de[7] vostre chalenge, et pur les jeovens ceinz[8] et nent pur nous qe seoms en baunc.[9] Mès ne mye pur ceo[10] dites outre. (Mès ceo ne fut mye par agarde.[11])

Pass. rehercea l'avowerie,[12] et dit qe la distresse fut fet hors de son fee et prest del averrer.

Scrop. En son fee. Prest etc.

Hertep. pria jour de grace pur Sire Henri de Percy. Et fut respondu par Sir Henri Scrop et par Sire William[13] Bereforde[14] qe jour[15] de grace ne fut mye grantable en un *replegiari* etc. Par qei etc.[16]

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 23d, Sus.

Henry de Percy, John le Hayward, Edward de Hyrshete and Gerard de Halstede were summoned to answer Robert, Archbishop of Canterbury, of a plea why they took his beasts and detained them against gage and pledge. The Archbishop, by Durand de Wydmerpol, his attorney, says that Henry and the others on [7 Feb. 1309] Friday next before the octave of the Purification in the second year of the now King, at Cocking in a place called Cockingefeld took twelve steers (*bovettos*) of the Archbishop and unjustly detained them against gage and pledge etc. until etc; damages, six pounds.

Henry and the others, by Robert de Brantingthorp their attorney, come and defend tort and force. And Henry answers for himself and the others and avows the taking; for he says that the Archbishop holds of him the vills of Cockingge, Wlenchemere, Myntestede and Suleham[17] by homage, fealty, and the service of five fees and the twentieth part of one fee of a

[1] *Ins.* pur la feaute *L.* [2] *Om.* A . . . semble *B.* [3] et *B, L.* [4] seisiz del homage mes *L.* [5] sache *S, T.* [6] bon *B, L.* [7] pur *B.* [8] pur le mein gent etc. *B*; pur les jufne gentz *L*; juenz gentz *P*; joefnes gentz *S*; joevenes genz *T*; joefnes gentz *Y.* [9] *Om.* qe . . . baunc. *L.* [10] *Om.* et nent . . . pur ceo *B.* [11] *Om.* this sentence *B, L.* [12] le avowrie *M.* [13] *Ins.* de *Al. Cod.* [14] et fuist r[espond]u per Ber. et Scrope dit *B.* [15] Percy. Ber. Jour *L.* [16] *Ins.* quere etc. *S, T.* [17] Mod. Cocking, Linchmere, Minsted, Selham.

Bereford, C.J. If you hold of me by the service of five shillings a year, and I am seised, and your fealty is arrear, I shall make a good avowry, though of the fealty neither I nor my ancestors were ever seised by the hand of you or of your ancestor.

Westcote. Still, so it would seem, a seisin of the fealty must be laid for form's sake. I put case that I brought my writ *de homagio capiendo* against Edmund Passeley, I should have when counting my count to allege that Edmund or his ancestors were seised of my homage or that of my ancestors; otherwise [the form would be bad].

Bereford, C.J. Really I am much obliged to you for your challenge:[1] and that for the sake of the young men here, and not for the sake of us who sit on the bench. All the same, you should answer over. (This, however, was not said by way of judgment.)[2]

Passeley rehearsed the avowry and said that the distress was made outside [the avowant's] fee: ready to aver.

Scrope. Within his fee. Ready etc.

Hartlepool prayed a day of grace for Sir Henry de Percy. It was answered by Sir Henry Scrope and Sir William Bereford that a day of grace is not to be granted in a replevin etc. Wherefore etc.[3]

Note from the Record (*continued*).

knight, and the service of closing (*claudendi*) forty perches around Henry's great park at Petteworth and twenty-two perches around the small park in the same vill with Henry's timber when need shall be etc. and the Archbishop shall be warned thereof; and that Henry was seised of the scutage for the said fees by the Archbishop's own hands; and that, because the homage and fealty of the Archbishop were arrear on the day of the taking, Henry took ten steers for the Archbishop's homage and two for his fealty, in the said place in his [Henry's] fee, as well he might etc.

The Archbishop says that Henry cannot avow the taking as lawful in the form aforesaid; for he says that every avowry (*quodlibet advocare*) in a plea of this sort for the detention of beasts between lord and tenant ought to be made concerning certain tenements, as manors, carucates, or a certain number of acres or the like; so that, since Henry by the form of his avowry supposes that the Archbishop holds of him four vills etc., which tenancy is not in certain, he [the Archbishop] demands judgment etc.

Afterwards Henry was told by the Justices that he should declare the form of the tenancy which the Archbishop holds of him. And Henry says that the Archbishop holds of him the said four vills of Cockingge, Wlenche-

[1] We take this to be irony.

[2] In this reporter's view the point of law was not decided.

[3] In the margin of MS. *P* a case is noted in which the interlocutors are Warr., Spig., Hengham and Toud. Hengham, as we understand him, states that on an avowry for homage, the homage may be traversed without answering to a seisin of escuage.

Note from the Record (*continued*).

mere, Myntestede and Suleham, to wit, the manor of Cockingge with the appurtenances, by homage, fealty, and the said services etc.

The Archbishop says that Henry cannot avow the taking in the said

22. ST. OSWALD (PRIOR OF) *v.* FRIARS PREACHER.[1]

Cessavit porté vers homme de religioun, ou piert qe s'il le porte de cesser le predecessour homme avera la vewe : *secus* de soun cesser demene.

Le Priour de Saint Osewalde de Gloucestre porta le *cessavit* vers le Priour de Ferers [2] Prechours de mesme la ville et demaunda un mès, un toft etc.

Toud. Nous demaundoms la vewe.

Lauf. La vewe ne devetz avoir, qar nostre actioun nous est doné [3] de vostre cesser demeine.

Herle. Si le Priour fust aultre homme qe de religioun, vous averetz en ceo cas l'entré sur le *cessavit* ou la vewe serroit grauntable. Par qei il semble qe la vewe est grauntable.[4]

Berr. Le quel portez vous vostre bref, de ses services qe arere furent en temps le predecessour le Priour [5] ou de ses arrere [6] du temps cesti Priour ; qe vous avet counté q'il tient de vous par certeyn services dount vous mesme fust seisi par my la mayn soun predecessour, et poet estre qe en temps soun predecessour vous fustes pleynement payé, ou poet estre qe les services furent arere en temps soun predecessour ?

Lauf. Nous vous dioms qe de soun temps demene.[7]

Toud. Nous ne tenoms rien de luy. Prest etc.[8]

{*Ber.*[9] Le bref est porté vers le Priur par noun de digneté, qel bref ne prove pas en qi tens le cesser se fist, einz put *indifferenter* estre entendu. Par qei dites qi ad cessé.– *Lauf.* Cest Priur.— *Toud.* Il ne tent pas de vous.—Alii e contra.}

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 67d, Glouc.

The Prior of the Order of Friars Preacher at Gloucester, by his attorney, offered himself on the fourth day against Walter, Prior of St. Oswald of Gloucester, of a plea of a toft with the appurtenances in Gloucester. And he [the Prior of St. Oswald] does not come and was the demandant. Therefore it is awarded that the said Prior of the said Friars go thence without

[1] *Vulg.* p. 61. Text from *A*: compared with *B*, *D*, *M*, *P*, *Q*. [2] Frere *B*. [3] acru *B*; encru *M*; encoru *P*. [4] la veuwe etc. *B*; est necessarie *M*, *P*. [5] *Ins.* de Freres Precheours *B*, *P*. [6] ou des arrerages *D*. [7] *Ins.* Ber. Ore vous *M*, *P*. [8] *Ins.* Lauf. issit denparler et ne revynt point. Par qei etc. *M*, *B*, *P*. [9] This ending of the case from *X*.

Note from the Record (*continued*).

place, for he says that Henry took the beasts outside his fee; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the octave of Trinity.

22. ST. OSWALD (PRIOR OF) *v.* FRIARS PREACHER.[1]

In a *cessavit* against the head of a religious house, a view will not be granted where the alleged cesser is committed by the tenant himself, not by his predecessor.

The Prior of St. Oswald's at Gloucester brought the *cessavit* against the Prior of the Friars Preacher of the same town and demanded one messuage, one toft etc.

Toudeby. We demand a view.

Laufer. A view you ought not to have, for our action was given to us by your own cesser.

Herle. If the Prior were not a man of religion, you would have in this case [a writ of] entry upon the *cessavit*,[2] and there the view would be grantable; so it seems the view is grantable.

Bereford, C.J. Are you bringing your writ for services arrear in the time of [the tenant's] predecessor or for those that fell arrear in his own time? You have counted that he holds of you by certain services, whereof you were seised by the hand of his predecessor; and it may be that in the time of his predecessor you were fully paid, or it may be that the services were then arrear.

Laufer. They fell arrear in his own time.

Toudeby. We hold nothing of him. Ready etc.[3]

{*Bereford, C.J.*[4] The writ is brought against the Prior by his name of dignity, and therefore does not show in whose time the cesser occurred, but may be taken indifferently. So tell us who it was that ceased.—*Laufer.* This Prior.—*Toudeby.* He does not hold of you.—Issue joined.}

Note from the Record (*continued*).

day, and that the said Walter, Prior of St. Oswald, and his pledges be in mercy. Let there be inquiry for the names of the pledges.

This short entry seems to represent the reported case. The demandant apparently came; but as, after some discussion, his counsel went out to imparl and did not return, this entry on the roll would, we suppose, be appropriate.

[1] Proper names from the record.

[2] See Stat. Westm. II. c. 21.

[3] Some books say that Laufer went out to imparl and, not returning, was nonsuited.

[4] From an abstract.

23. ANON.[1]

Drein present.

En un assise de derrein presentement prise par defaute qe dit pur le demaundaunt, le jugement fust qe le demaundaunt recovereit soun presentement, et q'il eust bref al evesqe, q'il receiveroit covenable persone al eglise[2] nyent countreesteaunt qe l'evesqe eust doné la eglise *per lapsum temporis* etc.[3] {Et[4] credo qe ceo fut fors auxi com esclarsment[5] de son dreit qaunt a la prochein voidaunce après, qar jugement n'est jammès si cler com il est qaunt il est execut. Par qei etc.} {Celi[6] qi recovere par *quare impedit* ou drein present, mès qe trové seit par assise ou par enquest qe le evesqe ad fet collacion *per lapsum* etc., tamen il avera bref al evesqe.}

24. ROTHYNGGE *v.* MIKELFELD.[7]

Intrusioun, ou le tenaunt dit qe la reversioun de la terre demandé li fust graunté par cely de qy seisine l'altre demaunde: l'altre receu a dire q'il n'attourna point.

Un A.[8] porta bref de intrusioun, et demaunda la tierce partie d'un manier etc., et counta de la seisine soun cosyn etc., et dit qe le tenaunt se abatist[9] après la mort un C. qe ceo tient en dower etc. Le tenaunt demaunda la vewe, et fust ousté etc.[10]

Friss. Actioun ne poetz avoir, qar mesme celuy de qi seisine vous demaundetz nous enfeffa de[11] les ij. parties et[12] nous graunta la revercioun de la tierce partie q'a luy deveroit revertir après la mort C. etc., et obliga luy et ses heirs etc.; par quele graunt C. se attorna a nous de ses services, et issint entrames nous après la mort C., com bien nous lust. (Et mist avaunt fait qe ceo testmoigna.)

Malm. Taunt amounte la force de vostre reson qe un de noz auncestres par my qi nous avons counté vous granta la reversion, par quele grant ele se atturna. A ceo diom qe[13] ele ne se attorna poynt. Prest etc.

[1] Text from *A*: compared with *D*, *M*, *P*, *S*, *T*. [2] *Om.* qil . . . eglise *A*; *ins. M*. [3] *Ins.* issint q'ele fut par collacion l'evesqe *M*; *sim. P*, *but add* preyme (pleyne ?); non obstante qe levesqe avoit done par collusion (*sic*) pur le temps encoru *D*. [4] This note from *M*, *P*. [5] esclarsement *P*. [6] This note of the case from *X*. [7] *Vulg.* p. 62. Text from *A*: compared with *B*, *D*, *M*, *P*, *Q*, *S*, *T*. [8] Une femme *B*; un homme *P*. [9] tenaunt navoit entre si noun par abatement etc. *M*; *sim. B*, *P*. [10] pur ceo qe ceo fut sa intrusion demene *M*; *sim. B*, *D*, *P*, *Q*. [11] nous dona *S*, *T*. [12] *Ins.* auxi *M*, *P*, *Q*; ovesqe ceo *B*. [13] *Om.* previous part of this speech, *A*. Text from *M*; *sim. P*, *B*.

23. ANON.

Darein presentment: writ to the bishop when he has collated.

An assize of last presentation was taken by default and gave a verdict for the demandant. The judgment was that the demandant should recover his presentation and have his writ bidding the bishop admit a fit parson, notwithstanding that the bishop had given the church on account of the lapse of time {And[1] I believe that this was only by way of manifestation of [the demandant's] right in case of another vacancy, for a judgment is never so clear as when execution has been done upon it.[2] Wherefore etc.} {A[3] man who recovers by *quare impedit* or darein presentment shall have a writ to the bishop, although it is found by the assize or inquest that the bishop has collated because of lapse.}

24. ROTHYNGGE *v.* MIKELFELD.[4]

To a writ of intrusion the tenant pleads a grant of the reversion with warranty by the demandant's ancestor and with attornment of the particular tenant. A reply traversing the attornment is sufficient.

One A. brought a writ of intrusion and demanded the third part of a manor etc., and counted on the seisin of his cousin, and said that the tenant abated after the death of C. who held in dower etc. The tenant demanded a view and was ousted [from the demand, as the alleged intrusion was his own].

Friskeney. Action you cannot have, for the person on whose seisin you demand[5] enfeoffed us of the two thirds and granted the reversion of the other third which was to revert to him after the death of the doweress, and bound himself and his heirs [to warranty], and on that grant [the doweress] attorned to us for her services, and so we entered after her death, as well we might. (And he produced a deed which witnessed this.)

Malberthorpe. The force of what you have said is tantamount to this, that one of our ancestors, through whom we have counted, granted you the reversion, upon which grant [the doweress] attorned. To this we say that she did not attorn. Ready etc.

[1] In some books this note is added.

[2] In other words, the bishop is not required to obey the writ; but he will have to make a return.

[3] From a set of condensed reports.

[4] This case is Fitz. *Estoppel*, 254. Proper names from the record.

[5] Not so; the ancestor on whose seisin the demandant counted was not the person whose deed was produced.

Friss. Qei responez au fait qe voet garr[auntie]?

Berr.[1] Soun r[espouns] cheet en voidaunce du fait; par qei il n'est mye mestier[2] q'il r[espoigne] a la garr[auntie].

Malb. Qe C.[3] se attorna point. Prest etc.

Herle. A ceo ne devetz estre r[eceu], qar veez cy le fait William[4] qe ceo[5] testmoigne q'ele attourna.

Malb. Ceo fait ne barre mye l'averement, mes chiet en evidence del enqueste.

Herle. C. attorna. Prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 144d, Suf.

John de Rothyngge, by his attorney, demands against Edmund de Mikelfeld the third part of the manor of Bliford[6] as his right and inheritance, and into which Edmund has no entry, except by the intrusion which he made into it after the death of Felicia, sometime wife of Simon Cryketot, who held it in dower of the gift of Simon, sometime her husband, grandfather of John, whose heir [John] is.

Edmund, by his attorney, after formal defence, says that one Ralph de Rothyngge, brother of John, whose heir John is, and of whose inheritance Felicia held the said third part in dower, granted the right and reversion of the said third part, belonging to Ralph after Felicia's death, to Edmund and one Elizabeth his wife, to hold to Edmund and Elizabeth and the heirs of Edmund; and that by reason of the said grant Felicia attorned herself to Edmund and Elizabeth, and did them fealty, to wit, at Bliford, in the said county; wherefore he says that after the death of Felicia the right and reversion of the said third part belongs to Edmund and Elizabeth by the assignment of Ralph, brother of John; and he produces a charter under Ralph's name which witnesses the said grant; and he demands judgment whether an action can be competent to John as heir of Ralph. (*Note continued on opposite page.*)

25. ANON.[7]

Fyn, si el sey leve de terre a tenir de conisour, le conisour ne soun heir avera *scire facias* einz destr[eindra].

Un fyn se leva en temps le[8] Roi H. etc. rendaunt un certeyn par an etc. Ore vient le heir le conisour et suyist de faire venir le

[1] In *S*, *T*, Bereford does not speak. [2] *Om.* mestier *A*. [3] ceo *A*. [4] fait C. *B*. *Om.* William *S*, *T*. [5] *Om.* ceo *Al. Cod.* [6] Mod. Blyford. [7] Text from *A*: compared with *D*, *M*, *P*, *Q*. [8] en le court le *Q*.

Friskeney. What say you to the deed which contains a warranty?

Bereford, C.J. His answer goes to an avoidance of the deed, so he has no need to answer to the warranty.

Malberthorpe. The doweress did not attorn. Ready etc.

Herle. To that you cannot be received, for see here a deed[1] which witnesses that she attorned.

Malberthorpe. That deed is no bar to the averment, but is matter of evidence for the inquest.

Herle. She attorned. Ready etc.

Issue joined.

Note from the Record (*continued*).

And John says that by that grant nothing could accrue to Edmund and Elizabeth in this behalf; for he says that Felicia never attorned herself to them upon that grant; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the octave of St. John Baptist.

At that day came John and Edmund in their proper persons. And Edmund says that the said jury ought not to proceed any further between them, nor can John claim any right in the said third part of the manor; for he says that, the said third part being in Edmund's seisin, John, pending the said jury here between them, by his writing granted, remised, and altogether for himself and his heirs for ever quitclaimed to Edmund, his heirs and assigns for ever, all right and claim that he had in the said manor, and granted and obliged himself and his heirs that they would warrant and defend all the said manor against all folk for ever; and he produces here the said writing under the name of the said John, and its date is 'At Blyford on Wednesday in the third year of the now King'[2]; wherefore he demands judgment whether he [John] can claim any right in the said third part against his deed.

And John cannot deny that the writing is his deed. Therefore it is awarded that Edmund go thence without day, and that John take nothing by his writ, but be in mercy for his false claim.

25. ANON.

A *scire facias* is not the proper remedy for the recovery of arrears of rent service due under a fine.

In the time of King Henry [III.] a fine was levied containing a reservation of an annual rent. Now comes the heir of the conusor

[1] Our books leave it doubtful whether the doweress had executed this deed. The record seems to show that she had not.

[2] There has been some omission in the transcription of the date.

traunscript del piee [1] hors de la tresoire en Baunk; et [2] pria d'avoir executioun.[3] Et [4] fust le heir celuy a qi le graunt se fist tenaunt.

Berr. Destreignez si vous voletz,[5] qar le *scire facias* n'averetz vous point pur nous.

26. CHESTERTON (PARSON OF) *v.* HUNTINGDON (PRIOR OF).[6]

Trespas, ou il avowa l'enportement com de dimes: et pur ceo q'il conust l'enportement en maniere, l'altre fust chacé a respondre a la cause del avowement.

Un homme porta soun bref de trespas vers le Priour de Huntyngdoun et aultres et se pleynt qe certeyn jour etc. et en tiele [7] ville [8] ses blees a la valaunce de etc.[9] pristerent et enporterent.

Hunt. Le Priour deit avoir la dysme garbe des [10] bleez cressauntz dedenz la fee de Lovetoft,[11] dedenz quel fee il se pleynt le trespas estre fait; et luy et ses predecessours ount eu etc.; issi qe après ceo qe J. qe se pleynt avoit carié soun blee [12] et severé [13] la disme, si vient le Priour et ces blees com sa disme prist et emporta, com bien luy lust, et nyent ov force et armes n'encountre la pees.

Willibi. La ou il dit q'il enporta la [14] disme com [15] soun blee demene,[16] qe ceaux furent nos bleez com nostre bref suppose. Prest etc.

Berr. Le [17] Priour ad conu le emportement com de soun blee demene et de sa disme en fourme, a quele fourme et cause de avowaunt [18] covent qe vous r[espoignez] si ceo fust en temps del emportement vostre blee, et nyent le blee le Priour ne de [19] sa disme, com il ad avowé.[20]

Will. La ou il ount dit q'il enporterent par resoun qe les dismes

[1] venir son ple de la note *M*; venyr le pee de la note *P*; venir la note *D*, *Q*. [2] *Ins.* Ric *M*; Ric. de W. *P*. [3] le scire facias hors de la note de garnir le tenaunt sil sout rien dire pur qei cele fyn ne devereit avoir execution *M*; *sim.* *D*, *P*, *Q*. [4] Mais ore *D*. [5] quidez de bien fere *M*, *P*. [6] *Vulg.* p. 63. Text from *A*: compared with *B*, *D*, *L*, *M*, *P*, *Q*, *S*, *T*, *X*. [7] *Om.* en tiele *A*; *ins.* *L*; *sim.* *P*, *Q*. [8] *Ins.* et *A*. [9] xx. li. *L*, *M*, *P*; x. li. *S*, *T*. [10] de touz les *L*, *M*, *P*, *S*. [11] de L. *B*; Loveton *L*; la soyle Lovetot' *S*; le soille Lovet' *T*. [12] carie ou dust sez blez a son hostel *M*; carie en Augst ses bleez al houstel *B*; *sim.* *L*; avoit carie ou dust avoir carie *P*. [13] et les ix. parties de la dyme de mesme la ble severe *S*; *sim.* *T*. [14] com son *M*; ses *B*. [15] et *M*, *B*. [16] dememene *A*; qil emporta com sa dyme *L*, *P*. [17] Ber. Issint ne eschaperez mye qar le *M*; *sim.* *B*, *L*, *P*. [18] avowement *D*; fourme cause et avowement *B*; a la forme et a la cause de quel avowement *L*; *sim.* *P*, *S*, *T*. [19] *Om.* de *Al. Cod.* [20] il vous dit *B*, *L*, *M*, *P*.

and sues to have a transcript of the foot[1] [of the fine] brought from the Treasury to the Bench; and he prayed that he might have [a *scire facias* issuing from the note of the fine to warn the tenant to come and say anything that he might have to say against the issue of] execution, and the tenant was heir of the grantee.

Bereford, C.J. You can distrain if you please. You shall not have a *scire facias* from us.

26. CHESTERTON (PARSON OF) *v.* HUNTINGDON (PRIOR OF).[2]

In trespass for taking corn the defendant justifies on the ground that the corn was his severed tithe. The defendant has to reply to the alleged cause of justification.

A man brought his writ of trespass against the Prior of Huntingdon and others and complained that on a certain day in a certain vill they took and carried away his corn to the value etc.

Huntingdon. The Prior ought to have the tenth garb of corn growing in the fee of Lovetot,[3] within which fee this trespass is supposed, and he and his predecessors have had it etc.; and after the plaintiff had carried his corn at harvest time[4] and severed the tithe,[5] the Prior came and took this corn as his tenth part and carried it off, as well he might, and not with force and arms nor against the peace.

Willoughby. Whereas he says that he came and carried away the tithe as being his own corn, we are ready to aver that it was our corn as our writ supposes.

Bereford, C.J. The Prior has admitted the carrying away of it as his own corn and his tithe in due form, and to this form and cause of the avowment you ought to answer that at the time of the carrying away it was your corn and not the corn of the Prior nor his tithe as he has avowed.

Willoughby. Whereas he says that they carried it off because the tithe of corn growing in the fee of Lovetot belongs to them and because

[1] One book says 'the note'; another 'the foot of the note.'

[2] Proper names from the record. It will be observed that the plaintiff is parson of the parish. The report seems to treat this fact as immaterial.

[3] Or 'in the soil of L.'

[4] The *Aust* is corrupted into *dust*. See the variants. This should be carefully compared with the recorded plea.

[5] Or 'severed the nine parts from the tenth.'

a luy[1] appendent des blees cressauntz *ut supra*,[2] et dicunt[3] qe le lieu ou nous pleignoms est dedenz le fee de Lovetoft, nous dioms qe n'ent en le fee de L.[4] Prest etc.[5]

{En[6] ceo plè ij. choses pount estre entenduz. La primere est, la ou le pleintif voleit averrer son bref, il fut chacé outre a r[espondre] a la cause del avowement le defendant. L'autre est, si trové soit l'enportement estre fet en le fee de C. et nent en le fee de L., le pleintif recovera damages sanz ja trier.[7]}

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 184d, Hunt.

Robert, Prior of Huntingdon, Brother John de Pappewrth, Brother Thomas Caperun, canons of the said Prior, John de Pyncebeke, John Aureye, and Walter de Pappewrth were attached to answer Henry, Parson of the church of Cesterton[8] of a plea why they, with Simon Noble de Grafham, Walter Noble and Hugh Tyd, by force and arms took and carried away the goods and chattels of the said Henry found at Cesterton, to the value of twenty pounds, and other enormities to him did, to his damage and against the peace. Henry, by his attorney, complains that the Prior and the others on [13 Aug., 1309] Wednesday next before the Assumption of B. Mary in 3 Edw. II., by force and arms took and carried away the goods and chattels etc., to wit, barley, to the value etc., against the peace: damages, twenty pounds.

The Prior and the others, by their attorney, come and defend tort and force. And John de Pincebeke, John Aureye, and Walter de Pappewrth say (*bene defendunt*) that they did not take or carry away any goods or chattels of Henry's on the said day and year by force and arms against the peace, as he surmises against them; and of this they put themselves upon the country. Issue joined.

And the Prior and his fellow-canons (*et alii concanonici sui*) say that they did no trespass against the peace; for they say that in truth the Prior takes (*percipit*) and ought to take a certain portion of the tithes from certain tenements in the vill of Cesterton, which tenements are of the fee of Lovetot, to wit, two garbs of the tithe issuing from the tenements of the said fee, the third garb being left for the parson of the church of Cesterton etc.; and that of annually taking this portion of two garbs of the tithe in form aforesaid, the Prior and all his predecessors from time immemorial were seised as of the right of their church of Huntingdon, and that therefore the Prior and

[1] naluy *A*. [2] *Ins.* en le fee de Lovetoft *M*; Loveton *L*. [3] dit outre *B*, *L*, *M*, *P*. [4] *Ins.* einz en le fee de C. *M*; *sim. B*, *L*, *P*. [5] *Ins.* et alii e contra *Al. Cod.* [6] Note from *M*, *B*, *L*, *P*. [7] sanz trier l'apendaunce des dismes etc. *B*; *sim. L*. *In X* (*after the joinder of issue*): Herle. Le pleintif en tel cas fu receu d'averer son bref sanz respondre a la cause. [8] Mod. Chesterton. See Rot. Hund. ii. 656.

the *locus in quo* is within that fee, we say that it is not within that fee.[1] Ready etc.

{In [2] this plea two points are to be observed. First, whereas the plaintiff wished to aver his writ, he was driven to answer to the cause of the defendant's avowment. Secondly, if it is found that the carrying off took place not in the fee of [C.] but in the fee of [L.], the plaintiff will get damages without any trial of the [right to the tithe].[3]}

Note from the Record (*continued*).

his fellow-canons fully admit that on the said day and year they took and carried away, without doing any trespass in this matter against the peace etc., their said portion of the tithe of the garbs of the said fee, [that tithe] having been separated from the nine parts and collected; and this they are ready to aver.

And Henry says that the Prior and the others on the said day and year by force and arms took and carried away against the peace etc., as he complains, his barley growing in the fee of Waldeschef in the vill of Cesterton, and not the tithe of two garbs etc. issuing from the fee of Lovetot as the Prior and the others say; and that this is so he prays may be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the morrow of St. John Baptist.

Afterwards, on the quindene of Michaelmas in A.R. 5, the jurors come and say upon their oath that John of Pappeworth, by order of the Prior, on the said day and year, by force and arms and against the King's peace, took twenty-one loads (*carentat'*) of barley of the said Prior in the fee of Waldeshef to the value of twenty pounds together with damages (*simul cum dampn'*); and they say that Thomas Caperun, John de Pyncebeke, John Aurey and Walter de Pappeworth are not guilty. Therefore [let them go] thence without day, and let the Parson be in mercy for his false claim against them. And it is awarded that the Parson recover his damages of twenty pounds against the Prior and John of Pappeworth; and that the Prior and John be taken etc.

Afterwards, in three weeks from Easter in A. R. 5, the Prior and Brother John of Papworthe came and rendered themselves to prison etc. And afterwards the Prior made fine with the King for himself and Brother John by one mark, on the pledge of Ralph of Huntingdon. Therefore be they delivered from prison etc.

[1] Some books add 'but within the fee of C,' and the record supports them.

[2] The following is part of the text in some of the manuscripts.

[3] One book, after the joinder of issue, makes Herle say: 'In a like case the plaintiff was received to aver his writ without answering to the justification (*cause*).'

27A. ANON.[1]

Entré sour diseisine en le *post*, ou il fust osté de la vewe purceo qe ly avoyt en un[2] bref en le *per* de mesmes lez tenemenz vers mesme la persone.

Un bref d'entré *post disseisinam* fust porté etc. Le tenaunt demaunda[3] la vewe.

Friss.[4] La vewe ne devetz avoir, qar einz ces hours portames un bref d'entré vers vous mesmes etc. et deimes 'en les queux vous n'avietz entré sy noun par A. a qy B. ceo lessa qe de ceo a tort etc.' ;[5] en quel bref vous avietz la vewe, et après ceo vous dites[6] qe vous n'entrastes pas par A. einz par jugement, et trové fust[7] par jugement, issint qe nostre bref fust abatu ;[8] et desicome vous ne devetz mye mesconustre si vous fustes[9] tenaunt des tenementz dount vous avetz[10] la vewe vers mesme la persone q'ore demaunde, jugement si ore devetz la vewe avoir.

Toud. Statut ne ouste poynt la vewe[11] si cest bref ne fust de mesme la nature com fust le premir bref, et le premir bref fust dedenz les degreetz, et ceo bref est hors de degreez. Jugement etc.

Et hoc non obstante[12] il fust ousté de la vewe.

27B. ANON.[13]

En un bref en le *post*, en les queux le tenant n'ad entré si noun pus la disseisine que une Is[abel] etc. de ceo en fist al demandant etc., le tenant demanda la vue. Ou fust dit par *Pass.* et *Touth.* La vewe ne devez avoir, car einz ses houres si portames nostre bref d'entré vers vous mesmes, et deimes qe vous n'aviez entré si noun par un A. a qi C. lessa, qe a tort et sanz jugement nous disseisi. A queu bref vous aviez la vewe, et après vewe venistes en court et deistes qe vous

[1] *Vulg.* p. 64 (a briefer note). Text from *A* ; compared with *B*, *D*, *L*, *M*, *P*, *Q*, *S*, *T*, *X*. [2] a *A*. [3] Fris. demanda *L* ; *sim. S*, *T*. [4] West. *L*, *S*, *T*. [5] et sanz jugement nous disseisit *M* ; *sim. L*, *P*, *Q* ; a tort disseisseissi nous mesmes *D*. [6] venistes en court et deistes *M* ; *sim. P* ; venistes et traversates nostre entre et distes *L*. [7] *Ins.* qe *M*, *P*. [8] *Ins.* apres vewe *M* ; *sim. P*, *Q*. [9] qe vous estez *P* ; si vous seetz *Q*. [10] aviez *P*, *Q*. [11] statut ne nous ouste point *P*, *Q*. [12] non obstante diversitate brevium *M*, *P*. Hoc non obstante habuit vis' *S*, *T* ; *but in margin* Entre ubi visus denegetur quia al' cassa br' post visus (*sic*). [13] Text from *Y* (f. 89).

27A ANON.[1]

In a writ of entry the view is denied to a tenant on the ground that he had it in a previous writ of entry; and this, although the former writ was in the *per* and *cui* and this is in the *post*.

A writ of entry *sur* disseisin in the *post* was brought etc. The tenant demanded a view.

Friskeney.[2] A view you ought not to have, for before now we brought a writ of entry against you and said 'into which you have no entry, save by (*per*) A. to whom (*cui*) B. demised it, which B. [had committed the disseisin];' and in that writ you had a view, and afterwards you said that you entered not by A. but by a judgment; and it was found that you did enter by judgment, and so our writ was abated; and since you cannot be ignorant as to whether you are tenant of tenements of which you had a view in an action brought by the same person, namely, the present plaintiff, we demand judgment whether you should have a view.

Toudeby. The Statute[3] only excludes a view when the second writ is of the same nature as the first; and here the first writ was within the degrees and this is outside the degrees. Judgment etc.

And notwithstanding this difference, he was ousted from the view.[4]

27B ANON.[5]

In a writ in the *post* [saying] 'into which the tenant has no entry, save after the disseisin which one Isabel did thereof to the demandant,' the tenant demanded a view. *Passeley* and *Toudeby* said: You ought not to have a view, for before now we brought our writ of entry against yourself and said that you had no entry, save by one A. to whom C. demised, which [C.] wrongfully and without judgment disseised us. On that writ you had a view, and after view came into

[1] Record not found.

[2] Some books make Friskeney demand the view and give this speech to Westcote.

[3] Stat. Westm. II. c. 48.

[4] Two books say the opposite; but their marginal notes seem to contradict their text.

[5] One book gives this fuller report.

n'aviez mie entré par A. solom ceo qe nostre bref supposa, einz par jugement. Et ceo fust trové par record, issi qe nostre bref s'enbati après vewe etc. Et desicom vous ne devez mie mesconustre qe vous n'estes tenant de meismes les tenemenz dont vous aviez la vewe et vers mesme la persone, demandoms jugement si ore devez la vewe avoir.

Herle. Statut ne nous hoste point sanz ceo qe vous ne eussez après vostre bref abatu porté un autre bref de mesme la nature qe l'autre fust. Mès oré fust le primer bref en les degreez, et cestui bref est hors de degreez, et demandoms jugement etc.

Et la court le ousta de la vewe, non obstante diversitate brevium etc.

Et si dit *Herle* qe si le bref qe est ore porté fust conceu deinz les degreez, com avant, n'est mye mervaille s'il fust ousté de la vewe, qe adonqe ne eust il autre voucher fors qe celui qe est nomé en les degreez ou sun heir ; mès cestui est hors de degreez ou puet voucher a volenté ; mès ne savoms de quoi avant la vewe.

E fust ousté *ut prius.*

28. TRUMPETON *v.* BUELES.[1]

Replegiari, ou estraunge serra receu d'averer q'il avoit nul tiel en vie.

(I.) En une avowrie[2] pur rente service, celuy qe fust estraunge al avowrie fust receu d'averer q'il n'y avoit nul tiel en vie com celuy sur qi l'avowrie fust fait.[3]

(II.) Un homme fit avowrie en play de prise des avers sur un autre qe sur le pleintif, ou le pleintif tendi d'averrer q'il ny avoit nul tiel en vie solonc ceo q'il suppose par s'avowerie. Et le avowaunt le traversa, *non obstante* q'il fut estrange al avowerie et qe l'avowerie fut fet pur rente service.

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 218, Bed.

John de Bueles and Roger Faukener in mercy for divers defaults.

John and Roger were summoned to answer Giles de Trumpeton of a plea why they took his beasts and unjustly detained them against gage etc.

[1] The first version of this note from *A* ; compared with *D*, *Q*. The second from *M* ; compared with *P*. [2] repleg' *D*. [3] *Ins.* non obstante qe ceo fust pur rente service et il estrange al avowery *Q* ; *sim. D.*

court and said that you had entry, not by A., as our writ supposed, but by a judgment. And this was found by record, so that our writ abated after view etc. And since you cannot make any mistake as to your being tenant of the same tenements of which you have had a view against the same [demandant], we demand judgment whether you ought to have a view.

Herle. The Statute does not oust us [from a view] unless after the abatement of your writ you have brought another writ of the same nature. But in this case the former writ was within the degrees, while this writ is without the degrees, so we demand judgment.

And the Court ousted him from the view, notwithstanding the difference between the writs.

Thereupon *Herle* said that if this writ were conceived within the degrees, as was the former, then it would have been no wonder that he should be ousted from the view, for in that case [the tenant] would have had no voucher save of the person named in the degrees or of his heir; but this writ is outside the degrees, so that he could vouch at his will; but for what [to vouch] we cannot know before a view.

However, he was ousted as aforesaid.

28. TRUMPETON *v.* BUELES.[1]

Avowry upon a third person. His existence denied.

(I.) In an avowry for rent service [a plaintiff] who was a stranger to the avowry was received to aver that there was no such person living as the person on whom the avowry was made.

(II.) An avowry was made in an action for the taking of beasts upon a person other than the plaintiff, and the plaintiff tendered to aver that there was no such person living as the person supposed in the avowry. And the avowant [had to] traverse this, although the plaintiff was a stranger to the avowry and the avowry was for rent service.

Note from the Record (*continued*).

Giles, by his attorney, complains that John and Roger on [13 April, 1307] Thursday next after the quindene of Easter in 35 Edw. I., in the vill of Thornecote in a place called Fukescroft le Moigne, took three heifers of Giles's and unjustly detained them against gage etc. until etc.: damages, a hundred shillings. (*Note continued on the following page.*)

[1] From different books we give two forms of this note. Proper names from the record.

Note from the Record (*continued*).

John and Roger come by their attorney. And John answers for himself and Roger, and after formal defence avows the taking; for he says that one Robert le Moigne holds of him a messuage and a carucate of land in the said vill of Northyevele,[1] whereof the *locus in quo* is parcel, by homage and fealty and the service of half a knight's fee, and by doing suit to John's court at Wardon from three weeks to three weeks; and that of these services one Alina, grandmother of John, whose heir he is, was seised by the hand of Fulk le Moyne, father of Robert, whose heir [Robert] is; and, for that the

29. GLOUCESTER (PRIOR OF) *v.* GRAUNTSON.[2]

Entré sour diseisine en le *de quibus*, et la vewe graunté, ou piert qe anciene demene per feffement de seignour serra fraunc fee.

En bref de entré en divers villes, le tenant dist qe la une ville est ancien demene. *Questio* si le bref abatra en tut.

Le Priour de Saint Piere de Gloucestre porta soun bref d'entré sur la diseisine[3] *de quibus* versus Otes de Grauntsoun,[4] et demaunda certeynz tenemenz en F. G. et H.

Herle. La ville de G. est auncien demene ou nul bref ne court sy noun le petit bref de dreit,[5] par qei ceste court de ceo ne pout avoir conisaunce.

Hert.[6] Coment qe vous dites qe la ville de G. est del auncien demene, nous vous dioms qe la vile de F. est parcele[7] de la baronye de E.,[8] la quel baronye un Arval,[9] qe vient en Engleterre ove William le Conquerour, dona a nostre eglise de Saint Piere de G.[10] en fraunk almoigne, quel estat[11] nos predecessours ount[12] continué du temps dount il n'y ad memorie cum de[13] fraunk fee, et demaundoms jugement si cienz ne devoms estre r[espoundu].

Et pus[14] qe la dem[aunde] fust en diverse villes, coment qe la ville de F. fut tenu en fraunc fee ut supra et la ville[15] de G. fust del

[1] The name of the vill seems to be differently stated by the two parties. A Thorncote Green exists close to the place now called Northill, which seems to represent Northivel: a little to the north of Warden, near the Ivel river. [2] Text from *A*; compared with *D*, *M*, *P*, *Q*, *S*, *T*. Second headnote from *X*. [3] *Ins.* en le *D*, *M*, *P*. [4] Stauntone *Q*; Stantone *D*. [5] *Ins.* secundum consuetudinem manerii *M*, *P*. [6] Hunt *D*, *M*, *P*, *Q*, *S*, *T*. [7] *Ins.* et membre *M*, *P*, *S*. [8] de Deuyas *M*; de Malvercote *P*; de D. *Q*; de B. *S*, *T*. [9] Haroude *M*; Harounde *P*; Ernalde *Q*; Arnalde *S*, *T*; Arnald *D*. [10] de Stantone *Q*; Stauntone *D*. [11] *Ins.* nous et *M*, *P*. [12] avoms *M*, *P*, *S*, *T*. [13] *Om.* de *M*, *P*. [14] pur ceo *M*, *P*, *Q*, *S*, *T*. [15] *Om.* de F. . . . ville *A*, *D*, *Q*; *ins.* *M*, *P*. *S*

Note from the Record (*continued*).

said services were arrear on the day of the taking, he avows the taking for the homage and fealty of Robert then being arrear, in the aforesaid place, which is part of the said tenements.

And Giles says that John ought not to be admitted to avow the said taking upon Robert as upon his tenant; for he says that there is not any such Robert, son of Fulk, surviving or in being (*superstes seu in rerum natura*); and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the octave of St. John Baptist.

29. GLOUCESTER (PRIOR OF) *v.* GRAUNTSON.[1]

Where the demanded tenements are in divers vills, a view is granted to the tenant in a writ *de quibus*, which charges the tenant with a disseisin, he having pleaded that one of the vills is in the ancient demesne.

The Prior of St. Peter's at Gloucester brought his writ of entry *sur* disseisin in the *de quibus* against [William] de Grauntson and demanded certain tenements in F., G., and H.

Herle. The vill of G. is ancient demesne where no writ runs except the little writ of right,[2] so this Court cannot take cognisance of this matter.

Hartlepool.[3] Although you say that the vill of G. is of the ancient demesne, we tell you that the vill of F. is parcel of the barony of Ewyas,[4] which barony one Harold, who came to England with William the Conqueror, gave to our church of St. Peter of Gloucester in free alms; and that estate our predecessors have continued from time of which there is no memory as frank fee; and we demand judgment whether we ought not to be answered in this court.

And since the demand was made [for land in] several vills and the vill of F. was held in frank fee as above, though the vill of G. was of the ancient demesne, as was not denied by [the demandant], the

[1] Proper names from the record.

[2] Some books add 'according to the custom of the manor.'

[3] Or 'Huntingdon.'

[4] One book says 'Malvercote'; but it is a book that deals in fancy names. See the charters relating to Ewyas Harold, Eaton, and Foy in the Gloucester Cartulary (Rolls' Series): especially vol. i. p. 285.

auncien demene, qe ne fust pas dedit de la partie, la court agarda la vewe, non obstante qe le bref fut en le *de quibus* et de son tort demene etc.[1]

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 184, Heref.

John, Abbot of St. Peter of Gloucester, by his attorney, demands against William de Grandisono and Sibilla his wife a messuage and sixty-six acres of land in Eton Tregoz and Foy[2] as the right of his church of St. Peter of Gloucester, and whereof William and Sibilla unjustly and without judgment disseised John Gamage, sometime Abbot of Gloucester, his predecessor, after the first [passage of Henry III. into Gascony].

William and Sibilla, by their attorney, say that the Abbot ought not to be answered to this writ; for they say that the tenements are within the precinct of Irchingfeld, which is of the ancient demesne of the crown of England; and they say that all the vills which are within the said precinct are of the ancient demesne; and they say that the said vill of Foy is a member of the vill of Elweston, which is within the said precinct and is of the ancient demesne etc.; and this they are ready to aver by Domesday Book. And this having been inspected, it is found that the vill of Elweston is of the ancient demesne etc. within the precinct of Irchingfeld etc. And thereupon William and Sibilla say that the vill of Foy is a member of the vill of Elweston, which is of the ancient demesne, as has been found; and thereof they demand judgment.

The Abbot says that one Harold Deuyas was at one time seised of the tenements demanded, as parcel of his barony of Ewyas; and that he gave

30. ANON.[3]

Assise de Novele Disseisine.

Nota qe un A. porta une assise de novele disseisine vers un William, qe dit qe assise ne deit estre, qe il mesme ad relessé et quiteclamé par ceu fet. A.: Nent mon fet. Et pur ceo qe les tesmoignes ne furent pas toux demoraunts en[4] ceu counté, furent ajornez en bank. Quel jour le tenant fit defaute. Par qey le pleyntif pria avisement de la court.

Berr. Pur ceo qe W. tynt son defens et son fet et point ne vent a jour qe doné ly est pur son defens trier, si agarde ceste court qe A. recovere seisine de terre et qe l'assise soit prise en counté endreit des damages.

[1] *Om.* non . . . etc. *A*, *D*, *Q*; *ins.* *M*, *P*, *T*; *om.* et . . . etc. *S*. [2] Mod. Eaton Tregoze and Foy: near Ross. [3] Text from *R*. [4] ou *R*.

view was granted [to the tenant], notwithstanding that the writ was in the *de quibus* and charged the tenant himself with the tort etc.[1]

Note from the Record (*continued*).

the tenements to God and the church of St. Peter of Gloucester and to one . . .[2] the Abbot's predecessor, to hold in free and perpetual almoin; and that the Abbot and all his predecessors were seised of the tenements as of frank fee (*ut de libero feodo*) etc. to be pleaded at the common law, until William and Sibilla unjustly disseised the said John Gamage; and this he is ready to aver etc.

William and Sibilla say that, whereas the said tenements are demanded against them in the vills of Eton Tregoz and Foy, and the said plea (*exceptio*) of ancient demesne is put forward only as regards the vill of Foy, and they cannot without a view be certified by the writ as to what tenements demanded against them are in one vill and what in the other, they demand a view thereof.

Let them have it. A day is given them here on the morrow of St. John Baptist etc. and in the meantime etc.

Afterwards, the process having been continued until the morrow of St. Martin in A. R. 4, the parties now come by their attorneys. And William de Grandisono, as before, says that the vill of Foy is a member of the vill of Elweston, which is within the precinct of the manor of Irchyngfeld, which is of the ancient demesne of the crown etc.; and this he is ready to aver.

A day is given them at York on Easter three weeks in the same state as now, and then there shall be done what justice [requires].

30. ANON.[3]

Assize. Default. Venue. Witnesses to deed.

One A. brought the assize of novel disseisin against one William, who said that an assize there ought not to be, for the plaintiff had released and quitclaimed by a deed that was produced. The plaintiff said: Not my deed. And because the witnesses did not all dwell in that county,[4] [the parties] were adjourned into the Bench. Then the tenant made default. The plaintiff prayed the award of the Court.

Bereford, C.J. Because W. held himself to his defence by this deed[5] and does not come at the day given him to try this defence, therefore this Court awards that A. recover seisin of the land, and that as to the damages the assize be taken in the county.

[1] Normally one charged with disseisin would not be allowed a view.

[2] Dots instead of a name.

[3] Only in one manuscript.

[4] The assize is brought before justices of assize in a particular county.

[5] Literally, held his defence and his deed; but the text is not very good.

31A. BENEYT *v.* LODEWYK.[1]

Dette ou la ley ne fut receu encontre taile enselé.

Un homme porta bref de dette et demanda certein summe d'argent et auxi summe de blé etc.

{Un [2] A. porta bref de dette ver B. e demanda liij. sous et x. quarters de furment et de aveine par iiij. contrats a paier a divers jours e a paier l'argent si mit il avant iij. taillies enseleez e a prover le blé cy [3] mist il avant un escrit.}

Clav. Qei avez de la dette etc.?

Mutt.[4] Endreit del blé veez cy escript [5] qe tesmoigne etc. Endreit del argent veez cy ij. tailles qe ceo tesmoignent.

Clav. Qaunt a l'escript, nent nostre fet. Prest etc. Et qaunt a les tailles, prest encontre lui etc. ou [6] par qaunt qe cest court agarde.[7]

Grant.[8] A ceo ne devet avenir encontre taille sealé [9] de vostre seale.

Berr. La taille est mult afforcé par vostre seal qe pende etc. Par qei jeo loo qe vous donez autre respons.

Pass. Nous avoms veu en temps Sir Johan de Mett[ingham] [10] et devant vous mesmes la ou un homme fut chacé a respondre a taille et la dedit, et le jugement fut reversé en Baunc le Roy. Et fut la cause pur ceo celui qe la dedit n'avereit [11] mye la penance.

Clav.[12] Qe rien ne lui devoms. Prest etc.

Et alii e contra.

{*Pass.*[13] Sire nous veimes ceinz ou le temps Sire Jon de Metyngham qe une taillie enselee fut dedit. E par ceo qe la court le receut, fut le jugement reversé. E la cause fut pur ceo qe la partie ne purreit mie porter penaunce pur taillie com pur escrit.

E pus furent al enverement qe ren ne deveit par les taillies etc.}

[1] Text from *M*: compared with *P*, *S*, *T*, *Y* (f. 237). [2] From *Y*. [3] *Corr.* si. [4] Muth *P*; Migg. *S*, *T*. [5] vostre fet *S*, *T*. [6] *Om.* ou *S*, *T*. [7] agardera *P*. [8] Sant. *P*; Migg *S*, *T*. [9] ensele *P*. [10] Mutt *P*. [11] navoit *S*, *T*. [12] Scrop. *S*, *T*. [13] From *Y*.

31A. BENEYT *v.* LODEWYK.

Semble that in an action of debt law cannot be waged against a sealed tally; but an averment that nothing is due is admissible.

A man brought his writ of debt and demanded a certain sum of money and also a sum of corn etc.

{One A.[1] brought his writ of debt against B. and demanded of him fifty-three shillings and ten quarters of wheat and oats by four [different] contracts to be paid at various days; and to prove [the debt of] the money he put forward three sealed tallies, and to prove [the debt of] the corn he put forward a writing.}

Claver. What have you for the debt?

[*Miggeley.*] As to the corn, see here a writing which witnesses etc. As to the money, see here two tallies which witness it.

Claver. As to the writing, it is not our deed. Ready etc. As to the tallies, ready etc. against him by whatsoever the Court shall award.[2]

Cambridge. To that you cannot get against a tally sealed with your seal.

BEREFORD, C.J. The tally is much strengthened by your seal which is hanging [from it]. So I advise you to give another answer.

Passeley. In the time of Sir John of Metingham and before you yourself we have seen a case in which a man was driven to answer to a tally and denied it, and the judgment was reversed in the King's Bench. And the reason was that the man who [falsely] denies his tally would not be punished.

Claver.[3] We owe him nothing. Ready etc.

Issue joined.[4]

{*Passeley.*[5] Sir, in the time of Sir John of Metingham we saw here that a sealed tally was denied. And because the Court received him [to a denial of the tally], the judgment was reversed, the reason being that the party shall not be put to punishment for a tally as for a writing [in case of false denial].

Afterwards they came to the averment that nothing was due upon the tallies.}

[1] An alternative beginning.
[2] It is an offer to wage law.
[3] Or 'Scrope.'
[4] In the following report the Chief Justice decides more distinctly that wager of law is not admissible.
[5] An alternative ending for this report.

31B. BENEYT *v.* LODEWYK.[1]

Une bref de dette oue escrit fut mis avaunt endreit de partie de la dette et tailles ensealés du remenant. L'escrit fut dedit, et qaunt a les taillez tendy la ley.

Migg. A ceo ne vendrez mye, qe nous avoms mys avant les taillez ensealés de vostre seal. Par qey n'entendoms mye qe a vostre lay encontre vostre fet demene de vostre seale enselé devez etc.

Pass. Sire, nous veymes devant Sire Jon de Metyngham etc. ou taille fut mys avant et fut ensealé et qe fut dedit, et qe trové fut qe ceo fut son fet, et il n'avoit poynt la penaunce auxi com pur fet dedit. Par qey il nous semble q'il n'estut nent granter ne dedire.

Berr. Ne sount les taillez ensealés de vostre seal demene? A qey tendez delayer?[2] Pur hounte!

Clav. Qaunt a les xl. s. dount les tailles sont mys avant, nul denier ne ly devoms. Prest etc.

Migg. Nous n'avoms qe fere de averement. Est ceo vostre fet ou ne mye?

Clav. A ceo n'avoms mestier a respondre, qe nous voloms averer qe nul denier etc.

Berr. Volet l'averement?

Migg. Sire, si vous agardez.

Berr. Nous l'agardoms.

Et l'averement receu.

Note from the Record

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 78d, Suf.

John de Lodewyk, parson of the church of Westowe, was summoned to answer Andrew Beneyt de Wrydewell of a plea that he render to him sixty-three shillings, which he owes and unjustly detains, and fifteen quarters of barley and fifteen quarters of rye, price eight pounds and five shillings, which he unjustly detains. Andrew, by Henry de Lyvemere his attorney, says that, whereas John on [21 April, 1308] Sunday next before the feast of St. George the Martyr in 1 Edward II., at Westowe, granted himself to be bound to Andrew in fifty shillings, to be paid to Andrew at the feast [8 Sept.] of the Nativity of B. Mary next following—and on [2 June] Sunday the feast of Pentecost in the same year, at the said vill of Westowe, granted himself to be bound to Andrew in thirteen shillings, to be paid to

[1] Text from *R.* [2] *Corr.* de [vous] allayer.

31b. BENEYT *v.* LODEWYK.

A writ of debt. A writing was produced in respect of part of the debt, and sealed tallies for the residue. The writing was denied [by the defendant], and as to the tallies he tendered his law.

Miggeley. To that you cannot get; for we have produced tallies sealed with your seal, and we do not believe that you ought [to be admitted to your law] against your own deed sealed with your seal.

Passeley. Sir, we saw a case before Sir John of Metingham etc. where a tally was produced and it was sealed; and it was denied and found to be [the denier's] deed; and yet he had no punishment as for a deed denied. Wherefore it seems that we are not put to confess or deny [this tally].

Bereford, C.J. Are not the tallies sealed with your own seal? About what would you tender to make law [1]? For shame!

Claver. As to the forty shillings for which the tallies are produced we owe him no penny. Ready etc.

Miggeley. We have nothing to do with an averment. Is this your deed or no?

Claver. We have no need to answer to that, for we will aver that [we owe] no penny.

Bereford, C.J. Will you take the averment?

Miggeley. Yes, Sir, if that be your award.

Bereford, J. We award it.

Averment received.[2]

Note from the Record (*continued*).

Andrew at the feast [14 Sept.] of the Exaltation of Holy Cross next following—and also on [8 June] Saturday in the week of Pentecost in the same year by his writing obligatory obliged himself to be bound to Andrew in the said corn, to be paid to Andrew at the feast [14 Sept.] of the Exaltation of Holy Cross next following—Andrew often required John to render to him the said debt, and John has not rendered it and still refuses to render it to him: damages, ten pounds. And he proffers two sealed tallies which witness the debt of sixty-three shillings, and a writing obligatory made under John's name which witnesses the debt of the said corn in form aforesaid. (*Note continued on next page.*)

[1] The verb *se allaier* is found with the meaning 'to at law yourself,' *i.e.* to get to your law.

[2] For earlier cases see Y. B. 20–1 Edw. I. p. 305; 21–2 Edw. I. p. 457; 30–1 Edw. I. p. 235; 32–3 Edw. I. p. 185.

Note from the Record (*continued*).

John, by Ranulph de Trowis, his attorney, denies tort and force, and as to the debt of sixty-three shillings, he denies that he is bound to Andrew in the said moneys or in any penny as Andrew surmises against him; and of this he puts himself upon the country. (Issue joined.) And as to the writing touching the corn, he says that it ought not to hurt him; for he says that the writing is not his deed; and of this he puts himself upon the country. (*Note continued on opposite page.*)

32A. ANON.[1]

Cui in vita.

Une femme [2] porta son *cui in vita*. Le tenaunt voucha a garraunt et avoit jour etc. A quel jour il fit defaute, issint qe le petit *cape* issit et retorné. A quel jour [3] *Launf.* pur le tenant: Sire la ou ele porte son bref de *cui in vita* et suppose son baroun estre mort, nous vous dioms q'il est *in plena vita* et en tiel lieu etc.: jugement de bref.

Et pur ceo qe la femme se prist tut a la defaute, le quele la partie ne savoit countredire,[4] si agardast la court qe la femme recoverist seisine etc.[5]

32B. ANON.[6]

En un *cui in vita* le tenant fit defaute après aparaunce issit retournable a lendemayn de la Purificacion l'an tierce. A quel jour la femme pria seisine de terre.

Le tenant. Actioun ne poet avoir, qe vostre baroun fust en pleyne vie jour du bref purchacé et uncore est.

La femme. Vous avez fet defaute après l'aparaunce. Savez la defaute.

Le tenant. A ceo n'avoms mestier a respondre, qe nous voloms averer qe son baroun est en pleyne vye.

Berr. Pur ceo qe vous avet fet defaute après aparaunce, et vous ne poet la defaute saver, si agarde la court q'ele recovere sa [7] seisine de terre, et vous en la mercy.

[1] Text from *M*; compared with *L*, *P*, *S*, *T*. [2] Alice *S*, *T*. [3] issit, au jour de petit cape returne *S*, *T*. [4] ne purra salver *S*, *T*; ne poit defere *L*. [5] *Ins.* non obstante son baron en pleyne vie com la partie le tendi daverrer. Et sic nota *L*. [6] Text of this version from *R*. [7] a *R*.

Note from the Record (*continued*).

Issue is joined, and a *venire facias* is awarded for the morrow of St. John Baptist. And be it known that the writing remains in the custody of J. Bacun, the King's clerk.

Afterwards, on the quindene of St. Hilary in A. R. 4, in the presence of the parties, the writing was delivered to Hervey de Stanton, justice, to take [a jury ?] upon it in the country. Afterwards, on the octave of Trinity in A. R. 6, H. de Stanton delivered the writing here in court to W. de Rasen, the King's clerk, for custody, etc.

32A. ANON.

Judgment by default.

A woman brought her *cui in vita*. The tenant vouched to warranty and had a day etc. At that day he made default, so that the little *cape* issued and was returned. At the day [of its return] *Laufer* said for the tenant: Sir, whereas she brings her *cui in vita* and supposes her husband to be dead, we tell you that he is alive and in such a place etc. And he prayed judgment of the writ.

And because [the demandant] staked all on the default and [the tenant] could not deny it, the Court awarded that [the demandant] recover seisin etc.[1]

32B. ANON.

In a *cui in vita* the tenant made default after appearance. [Wherefore the little *cape*[2]] issued, returnable on the morrow of the Purification in the third year. On that day the [demandant] prayed seisin of the land.

For the tenant. Action you cannot have, for your husband was alive on the day of writ purchased and is so still.

For the [*demandant*]. You have made default after appearance. Save the default.

For the tenant. No need to answer that, for we will aver that your husband is alive.

Bereford, C.J. For that you have made default after appearance and cannot save your default, this Court awards that the [demandant] recover her seisin, and that you be in mercy.

[1] One book adds 'notwithstanding that the husband was alive, as the party tendered to aver.' A second report follows.

[2] Some words seem to have dropped out of the text.

33. NOSTELL (PRIOR OF) *v.* PASEY.[1]

Dreit, ou le def[orceour] après mise de grant assise fit defaute.

Le Priour de Seint Oswald [2] porta son bref de dreit de avowesoun del eglise. La partie se mist en la grant assise, et avoit [3] jour a lendemeyn de la Purificacioun. A quel jour il ne vint pas en court. Mès vint a terce jour.[4] Et pur ceo qe la partie demandant se prist a la defaute tut a trenche, la quele le tenaunt ne savoit [5] sauver, mès dit q'il vint assez par temps del hure q'il vint au terce jour, si agarda la court qe le Priour recoverast s'avowesoun del eglise a li [6] et ses successours quitement [7] del tenaunt et de ses heirs a tous jours,[8] *non obstante* q'il vint au terce jour, par defaute.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 133, War.

The Prior of St. Oswald de Nostell, by his attorney, demands against Richard, son of William Pasey de Neubald, the advowson of the church of Neubald Pasey [9] as his right etc., by a *praecipe* for an advowson. The Prior says that one Ambrose, sometime Prior, his predecessor, was seised of the advowson as of fee and of the right of his church of St. Oswald etc., in time of peace, in the time of King Henry, grandfather of the now King, and in that same time presented to the church one Jacob Trebys, his clerk, who at his presentation was admitted and instituted etc., taking thence esplees, as in oblations, obventions, great and small tithes etc., to the value etc. And that such is his right and the right of his church he offers etc.

Richard denies (*defendit*) his right and the seisin of Andrew his predecessor, as of fee and right etc., and all of it etc., and puts himself upon the grand assize of our lord the King, and prays that a recognition be made whether he has greater right to hold the advowson as he holds it or the Prior to have the advowson as the right of his church as he demands it.

A day is given them here on the morrow of the Purification, and then let four knights come etc.

Afterwards, at that day, comes the Prior by his attorney, and offers him-

34. ANON.[10]

Nota en un bref d'entré *ad terminum qui preteriit.*

Un enfaunt par gardeyn porta son bref d'entré *ad terminum qui preteriit* des tenemenz lessez par l'auncestre l'enfaunt, ou fut dit q'il ne

[1] Text from *M* : compared with *L*, *P*, *S*. [2] Hoswalde *S*. [3] avoyent *L*. [4] *Om.* mes. . . . jour *L*. [5] put *S*. [6] *Om.* a li *M* ; *ins. P*. [7] saunz doute *L*. [8] *Om.* the residue *L*. [9] Mod. Newbold Pacey. [10] Text from *M*: compared with *L*, *P*.

33. NOSTELL (PRIOR OF) *v.* PASEY.

Final judgment by default after mise.

The Prior of St. Oswald brought his writ of right for the advowson of a church. The tenant put himself on the grand assize and had a day on the morrow of the Purification. On that day he did not appear. But he came on the third day [after]. And since the demandant staked all on the default, and the tenant could not deny it, but said that he had come in time enough since he had come on the third day, the Court awarded that for the default the Prior recover the advowson of the church to himself and his successors quit of the tenant and his heirs for ever, notwithstanding his appearance on the third day.

Note from the Record *(continued)*.

self against Richard in the said plea. And Richard, on the first day of the plea and the second and the third, being solemnly called, comes not. And he had a day at the said term as appears above. And likewise on the fourth day the Prior offers himself against him. At that fourth day Richard comes in his proper person. And the Prior demands judgment of the default which Richard made as aforesaid. And Richard, being asked by the justices if he can (*si sciat*) cure the default, says nothing whereby he is able to cure it. Therefore it is awarded that the Prior recover against him the advowson, to hold to the Prior of St. Oswald and his successors, Priors of St. Oswald, and to his church, quit of Richard and his heirs for ever; and that Richard be in mercy.

Execution is stayed in order that an inquest may be taken, as a fraud upon the Statute [of Mortmain] may be suspected. The roll then tells how an inquest was taken by W. de Bereford at Warwick on Tuesday after the close of Easter in A. R. 3; how the jurors found that there was no collusion; and that execution is to issue.

Afterwards, on the quindene of Easter in A. R. 14, the King sent to W. de Bereford his writ [of error] bidding him send the record and process of this plea to him [the King]. It is sent to him.

34. ANON.

Action by infant. Demurrer of the parole.

An infant by his guardian brought his writ of entry *ad terminum qui praeteriit* for tenements leased by his ancestor. And it was said

deust estre respondu duraunt son nounage. Et la parole demorra par le nonage. Et jeo cray qe la cause pur qei il avoit sa action dedeinz age si fut par l'alienacioun del ten[aunt] q'il purra fere [1] en le meen temps etc.[2]

35A. SERIAUNT *v.* BANYNGHAM.[3]

Entré sour novele diseisine en les degrez, ou un qe fust hors de les degrez pria d'estre receu a defendre soun droit. Quere totum placitum quia durum.

Entré sur diseisine. Prier d'estre receu a defendre soun droit, ou il fut chacé par la curt a mostrer soun droit solom le purport d'estatut.

Un bref d'entré fut porté vers Johan de Felebrig [4] de certein tenemenz, en les queux le tenant n'ad entré si noun par un Geffrei et Eustace sa femme, qe a tort et sanz jugement diseisirent un Robert frere le demandant, qi heir etc. Johan Felebrig fit defaute après defaute. Et survynt un Richard et dit qe le tenant n'avoit qe franctenement issint qe la reversioun et le fee [5] fut regardaunt a lui. Et pria etc.[6] a defendre son dreit. Et fut chacé par la court a moustrer coment la reversioun etc. a lui appendit.[7]

Migg.[8] Un Jordan fut de ceux tenemenz seisi, le quel Jordan granta mesmes ceux tenemenz a un Jordan [9] a terme de sa vie, et qe après son decès etc. demorassent a un Marie [10] a terme de sa vie,[11] et q'après le decès Marie demorassent a un autre Marie [12] etc. a terme de sa vie, et qe après le decès Marie demurassent a lui,[13] et a ses heirs etc. Et Marie et Marie furent [14] mortz [15] et issint la reversioun est a nous etc. *ut supra*, et prioms etc. (Et ostendit scriptum quod voluit qe Jordan granta a un Jordan etc. *ut supra*, et qe après son decès mesmes les tenemenz descendr[eient] a M. etc. a terme de sa vie etc. et issint de un en autre tut vois par un descent.)[16]

[1] qe le tenant poit avoir fet *L.* [2] *Ins.* mes y r' *M*; mes il r' *P*; *om. L.* [3] *Vulg.* p 64. Text of this first version from *M*: compared with *B*, *L*, *P*, *S*, *T*, *Y* (f. 88d). Headnotes from *B* and *S*. [4] Felberg *L*; Pelbyrg' *S*; Pelbirg' *T*; Felbrug' *Y*. [5] *Ins.* et le droit *B*. [6] destre receu *B*. [7] Touth. Moustrez coment *Y*. [8] Miggel *P*; Mutt *S*. [9] Johan *Y*. [10] Marg. *S*, *T*. [11] *Om.* et qe . . . sa vie *L*; *similar omission S*, *T*. [12] a une Sarre *Y*. [13] deces le tenemenz demorassent a un J. de F. etc. a terme de sa vie et qe apres le deces Johan demoergent a Richard *B* (*with nothing about the two Maries*). *Om. from after* Sarre *Y*. [14] furount *M*; sount *L*. [15] Jourdan morust et J. de F. entra *B* (*over erasure*). Et Mar' et Sarr' sunt deviez et Richard est le frere Sarr' *Y*. [16] tenemenz etc. a Johan de F. etc. (*over erasure*) et issint par voie etc. *B*; cartam que testatur que le lees se fist a Johan a terme de sa vie e dont voleit lescrist qe apres le deces Johan qe les tenemenz desc' a Mar' a terme de sa vie e apres le deces Mar' qe les ten' desc' a Sarr' e a ses heirs etc. *Y*. *Om. provisions of the deed L*, *S*, *T*.

that he ought not to be answered during his nonage. And the parole demurred on account of his nonage. And I think that the cause for which he had his action while within age was because of the possibility that the tenant might make an alienation in the meantime.[1]

35A. SERIAUNT *v.* BANYNGHAM.[2]

A deed limiting an estate to A for life says that after his death the tenement is to 'descend' to B. *Semble* this gives B nothing. *Qu.* whether when a writ of entry 'within the degrees' is brought against a tenant who makes default, the Court will receive as reversioner a person who is not named in the writ nor is the heir of anyone there named and who admits none of the facts stated in the 'degrees.'

A writ of entry was brought against John of Felbridge for certain tenements, 'into which he has no entry save by (*per*) one Geoffrey and Eustace his wife, who wrongfully and without judgment disseised one Robert the demandant's brother, whose heir [the demandant is].' John made default after default. One Richard intervened and said that the tenant had only a freehold, the reversion and the fee [and the right] belonging to [the intervener]. And he prayed to be received to defend his right. And he was driven by the Court to show how the reversion belonged to him.

Miggeley. One Jordan was seised of these tenements, and he granted them to one Jordan[3] for his life, so that after his death they should remain to one Mary for life, and that after her death they should remain to another Mary[4] for life, and that after her death they should remain to [the intervener] and to his heirs, etc. And the two Maries are dead, and so the reversion is to us as above, and we pray [to be received]. (And he produced a deed which said that Jordan granted to Jordan, as above, and that after his death the tenements should descend to M[ary] for her life and then to another: the word in all cases being 'descend.')[5]

[1] The action merely 'stands over,' so there is *lis pendens*.

[2] Proper names in the title from the record. As none of our three reports are very correct, the reader is counselled to begin with our note from the record. In our translation we do not correct the names given by the reporters.

[3] In our second report and in the record the first limitation is to John, the defaulting tenant in the action.

[4] Or to 'Sarah.'

[5] Literally, 'and so from one to another always by a descent.' In some books the case is more or less completely spoilt by omissions of parts of this statement.

Herle. Vous ne devez estre receu, qar nostre bref est conceu en les degrez ou la ley est limité [1] qe nul par procès de ley [2] ne par eide de court ne serra partie a ma actioun, s'il ne soit la persone conpris en les degrez ou son heir.[3] Ore n'est il ne l'un ne l'autre, einz vint de cousté; ou par cas s'il eust granté l'entré le tenaunt par celui qe [4] nostre bref suppose com d'estat a terme de vie et de cel estat le dreit serroit a lui, en quel [5] cas il ne freit [6] pas degrez,[7] ou [8] il serroit bien r[eceu.] Mès il [9] cleime autre [10] estat, et s'il [11] fut [12] resceu [13] ceo serreit en abatement de nostre bref par cely qe n'est mye nomé en les degreez. Et demandoms jugement et priom seisine de terre.[14] Estre ceo s'il fust receu, il averoit l'avauntage qe le tenaunt en demene n'averoit mye, q'il vouch[ereit] hors de la lyne; et si ne freit le tenaunt en demene. Et demandoms jugement etc.

Malb. La ley est limité [15] auxi com le fet est.[16] Mès ore nous moustroms le fet estre tiel *ut supra*, et sur ceo avoms mis [17] especialté, a qei la court doit doner foy,[18] qe tesmoigne *ut supra*. Et avoms nostre garrauntie vers Jordan et ses heirs. Et si nous ne seoms poynt r[eceu] nostre dreit serroit [19] recoveri sanz r[espons] de nous, qe sumes prest a r[espondre], et auxi [20] nostre garrauntie perdue. Et [21] il pount porter le bref hors des degreez [22] et terminer lour [23] dreit, si nul en ount. Et demandoms jugement si a tiel mesch[ief] [24] etc. ne devoms.[25]

{*Friskeney.*[26] Vous pledez auxicom il fust receu.

Herle. Il n'est pas la persone a qi court deit doner fey ou avisement de estre receu pur le meschief de issue de plee.}

Herle.[27] Vous n'estes mye la persone a qi la court doit foy doner pur le issue de plè qe [28] de ceo ensuwereit le quel [29] n'est mye soeffrable par statut [30] etc., qar donqes vouchereit [31] etc. *ut supra*, quod

[1] livere *L.* [2] par apel de court *Y.* [3] *Om.* ou son heir *B.* [4] com *L.* [5] ceo *Y.* [6] feit *B*; fust *L.* [7] il defreit les greez *Y*: *corr.* il ne defreit pas les degrez *Conj.* [8] *Om.* ou *P*; e *Y.* [9] sil *B.* [10] avoir *B.* [11] *Om.* sil *B.* [12] fuist *B.* [13] *Om. to after next* receu *M; supplied from L; sim. B, S, T.* [14] *Om.* par . . . terre *Y.* [15] livere *L, M, P, S, T, Y*; lymite (*over erasure*) *B*; *ins.* qe homme serra receu *S, T.* [16] *Om.* est *B.* [17] *Ins.* avaunt *Al. Cod.* [18] *Ins.* et *B.* [19] *Ins.* peri est *B.* [20] avoms *B.* [21] ou *L.* [22] greez *M.* [23] trier le *L.* [24] meschief (*in full*) *L, Y*; meschef *P.* [25] *Ins.* estre receu *L. S, T.* [26] From *Y.* [27] Hervi *B, S, T*; *om.* this speech *Y.* [28] et *B.* [29] ensiwereit chose qe *B.* [30] nest pas de ley suffrable *L*; de ley ne de statut *S, T.* [31] *Ins.* hors *S, T.*

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WITHDRAWN

Herle. You ought not to be received, for our writ is conceived within the degrees; and in that case the law sets this limit, that no one is to be made party to any action by process of law or aid of the Court, unless he be a person who is comprised within the degrees or the heir of such a person. And here [the intervener] is neither one nor the other, but comes in from the side. And perchance if he had admitted that the tenant [in this action] had entered by the person through whom our writ supposes him to have entered, but had said that the tenant had only an estate for life and that the right [*i.e.* the reversion] on that estate belonged to him [the intervener], then indeed he might have been received, since he would [not contradict the degrees named in the writ].[1] But here he claims another estate; and, if he were received, that would be in abatement of our writ by one who is not named in the degrees. So we demand judgment and pray seisin of the land. Besides, if he were received, he would have an advantage that the tenant in demesne would not have, namely he could vouch outside the line [mentioned in our writ], and that the tenant in demesne could not do.[2] So we pray judgment etc.

Malberthorpe. The law is fashioned to suit the facts. Here we show the facts to be those stated, and we produce a specialty, to which the Court should give credence, and it witnesses as aforesaid. And we have our warranty against Jordan and his heirs; and if we be not received, then our right will be recovered from us without any answer from us who are ready to answer, and our warranty also will be lost. And they [for the demandant] can bring a writ outside the degrees and [so] can bring to judgment their right, if right they have. We pray judgment whether, such being the mischief, we ought not to be received.

{*Friskeney.*[3] You plead as if he were already received.

Herle. He is not the person to whom the Court should give credence so as to allow his receipt because of the mischief that might issue from this plea.}

Herle.[4] You are not the person to whom the Court should grant credence for the issue of this plea; for [if you were received], a consequence would follow which Statute will not allow,[5] for you would

[1] This seems to be the meaning, but there is a little difficulty in obtaining it from our texts.

[2] Stat. Westm. I. c. 40. Where the writ is within the degrees, none is to vouch out of the line.

[3] One of our books gives this instead of Herle's next speech.

[4] Some books ascribe this speech to Stanton, J.

[5] Or 'which neither law nor statute will allow.'

esset contra Statutum la ou jeo puisse avoir mon bref en[1] les degrez etc.

Toud. S'il fut r[eceu], il abatereit nostre bref en[2] l'entré,[3] ou le tenaunt ad conu l'entré bon[4] qaunt a cel degree. Et estre ceo,[5] si le tenaunt eust vouché cesti q'est ore prié etc. il ne serreit pas a ceo r[eceu]. Nent plus, a ceo qe semble, deit celui q'est hors des degrez survenir[6] par sa priere d'estre r[eceu]. Estre ceo, si lour entré soit de plus haut dreit qe ne soit nostre actioun[7] sur la novele diseisine, il ount lour rec[overer] de plus haut, et si lour entré soit plus bas et plus tardif qe nostre actioun, cel entré de plus bas ne defet mye nostre[8] actioun de plus haut.[9]

{*Herle.*[10] Coment survendroit il de sei abatre entre moi e le tenant e de sei faire partie a ma accion la ou il ne serroit pas attret par veye de ley ?

Scrope. Auxicom vostre accion est un gros de vostre part, auxi est ceo q'il prient de lour part un gros, e eux regardent lour droit de totes pars e prient de estre receu auxicom affiert a lour droit.}

Herle.[11] Si le tenaunt[12] eust aliené a un autre et eust repris estat etc. et jeo portasse mon bref vers lui com ore fessoms,[13] et le tenaunt dit[14] q'il entra par celui de qi il prist son dreyn[15] estat, par taunt ne abatera mon bref par l'entré de plus haut.[16] Et depus qe le tenaunt[17] ne abatera mye mon[18] bref, tout put il averrer l'entré, de mult plus fort celui qe n'est pas nomé en mon bref ne en les degrez ne deit estre r[eceu] del hure qe cel resceit cherreit en abatement et en delayement de ma actioun, la ou le dreit q'il allegge lui[19] est fet[20] par autre qe n'est pas nomé etc.

Pass. Si mon diseisour[21] eust aliené et repris estat il demurreit en son primer estat.[22] (Et hoc intelligit[23] quod[24] disseisitor remaneret[25] ut prius. Set quidam dicunt quod si recepit[26] statum sibi

[1] on *M.* [2] pur *Y.* [3] *Om.* en lentre *B.* [4] lun *M*; bon *L*, *P*; *sim. S*, *T.* [5] *Om.* et . . . ceo *B*, *and begin a speech by* West[cot], *B*, *S*, *T.* [6] qe survynt *L*, *S*, *T.* [7] *Ins.* founde *L.* [8] *Om.* actioun . . . nostre *B*; tardif ele serra barre et defet par nostre *S*, *T.* [9] *Ins.* donqes sumes nous en ley etc. *B.* [10] From *Y.* [11] *Ins.* ad idem *L*, *S*, *T.* [12] *Ins.* del demeyne *Y.* [13] foms *B.* [14] deist *B.* [15] primer *S*, *T.* [16] bas *L.* [17] *Ins.* del demeyne *Y.* [18] *Om.* bref. . . . mon *B*, *S*, *T.* [19] la ou il allegge qe le droit luy *B.* [20] allegge si est *Y.* [21] auncestre *L.* [22] *Ins.* com disseissour *L*; scil. diss' *S*, *T.* *Om.* the following note *Y.* [23] est intelligendum *B.* [24] quia *B.* [25] remanet *B.* [26] recuperet *B.*

vouch [out of the line] as aforesaid, and this would be against Statute where I can have my writ within the degrees.

Toudeby [on the same side]. If he were received he would abate our writ on the point of entry,[1] whereas the tenant [who is making default] has voluntarily confessed the writ good so far as the entry is concerned.[2] Besides, if the tenant had vouched this man [who now prays receipt], the voucher would not have been allowed. And no more, so it seems to us, should one who is outside the degrees intervene with a prayer to be received. Moreover, if their entry is by higher right than is our action on the novel disseisin, they have their recovery higher up; and if their entry is lower down and later than our action, that entry lower down cannot defeat our action higher up.[3]

{*Herle*.[4] How could he intervene and interpose himself between me and the tenant and make himself a party to my action where he could not be drawn into it by way of law?

Scrope, J.[5] Just as your action is a matter of substance on your part, just so is their prayer [to be received] a matter of substance on their part, and they look at their right from all sides and pray to be received as appertains to their right.}

Herle [on the same side]. If the tenant had alienated to another, and then had retaken an estate, and I brought my action against him, as now I do, and he said that he entered by the man from whom he took his last[6] estate, he would not thereby abate my writ founded on an entry that was higher up. And since the tenant shall not abate my writ, although he may be able to aver his entry, *a multo fortiori* a man who is not named in my writ and who is not within the degrees [there mentioned], and who gets his alleged right by the deed of one who is not named [in my writ], ought not to be received, when the effect of the receipt would be to abate my writ and delay my action.

Passeley. If my disseisor alienated and retook an estate, he would remain in his first estate, [namely, that of a disseisor[7]]. (Note that this is true of a disseisor who comes back into his old position;[8] but there are who say that if he takes back an estate to himself and to his wife or to himself and some other person jointly, and the writ

[1] Or possibly 'in its entirety.'

[2] See the text. We read the *degree* of the manuscripts as two words (*de gree*) and translate by 'voluntarily.'

[3] Or 'will be barred and defeated by our action which is higher up.'

[4] From one only of our books.

[5] This speech may come from Geoffrey Scrope as counsel. Translation is difficult.

[6] Some books say 'first.'

[7] Not in all books.

[8] Literally 'who remains as before.'

et uxori vel alteri coniunctim, et breve nove diseisine impetraretur super ipsum solum,[1] breve esset cassatum si obiectum fuerit.)

Herle ad idem.[2] Prier estre r[eceu] est doné par statut et les estatutz sount diverses, qe ascuns sont donez pur[3] necessité[4] de ley, et ascun[5] pur enbregger delays.[6] Mès s'il fut r[eceu] ceo serreit en alargisaunt les[7] delays et en aloignaunt nostre actioun. Et demandoms jugement.

Malb. Le statut ne doune mye cel cas,[8] mès fut fet en[9] avauntage entierment a celui[10] a qi la reversioun appent après le decès[11] ceus manieres de tenanz qe volent perdre.[12] Et del hure qe les tenemenz sount en peril d'estre perduz et nous avoms moustré a la court qe le tenaunt n'ad qe terme de vie et avoms moustré qe la reversioun a nous append, par qei nous demandoms jugement si nous ne devoms estre r[eceu].

{*Bereforde.*[13] La ou eide est granté de court, ceo ne tout rienz a la partie; mès la ou eide est granté de la partie, ceo est altre manere etc.}

Ber. Forme ne put estre taillé si noun en iij. maneres. Ou c'est en la reversioun, ou en la descente, ou en le remeyndre. Mès ore est issi qe[14] le fet qe vous avez avaunt mys ne vous eide par nul de ceux iij. voies. Par qei etc. Qar il parle[15] de un descente,[16] la ou vous estes estrange persone a ceux a queux[17] le primer grant[18] se fit. Et de autrepart qaunt homme prie d'estre receu a defendre son dreit et bote avant fet etc. si deit homme veer s'il soit par mesme le fet eidé a demander par voie d'actioun. Mès par ceo fet n'averez jammès[19] actioun. Par qei il semble, sanz ceo qe vous pussez moustrer a la court autre moniment,[20] qe ceo fet ne vous doit valer etc.[21]

Malm. Sire, vous devez avoir regarde a la volunté Jordan, q'est noté[22] en le fet. Qar le fet voet 'volo et concedo quod dicta tenementa desc[endant]' etc., issint qe cele parole 'desc[endant]' n'est qe une mepprisioun,[23] sur la quele vous ne[24] devez regarde avoir depus qe la[25] volunté est expressement qe nous tendoms[26] après le

[1] suum *B.* [2] *Om.* ad idem *L, S, T.* [3] est done par statut et statut est donee pur *B*; *sim. S, T*; et les estatuz sount ordeinez pur *L.* [4] donez en amendement *Y.* [5] ley ascuns *L.* [6] ley et abregg' les deleies *B.* [7] allargissement des *B.* [8] cause *B, L*; statut nest pas done par tiel cause *S, T*; *sim. Y.* [9] *Om.* fut fet en *B.* [10] *Om.* entierment a celui *B.* [11] *Ins.* etc. *L.* [12] la reversioun est etc. et si le tenant voille perdre *S, T.* [13] In *Y* the case ends here with the following sentence. [14] *Om.* qe *B.* [15] pout parler *B.* [16] descendre *S, T.* [17] *Om.* descente . . . al queux *B.* [18] *Om.* grant *B*; doun *L, S, T.* [19] ja *B, S, T.* [20] onuerement (?) *M*; chose *B* (*over erasure*), *S, T*; averement *L.* [21] ceo fet ne veot qe vous ne devetz estre receu *B*; fet ne devez estre receu *L.* [22] mys *B.* [23] mescription *P.* [24] *Om.* ne *B.* [25] sa *B.* [26] tendroms *B*; *sim. L*; tenoms *S, T.*

of novel disseisin is brought against him alone, the writ will be quashed if this objection be taken).

Herle [on the same side]. The prayer to be received is given by statute.[1] Statutes are of different kinds. Some are ordained for amendment[2] of the law; others for the abridgment of delays. But, if this man were received, that would increase delay and defer our action. We demand judgment.

Malberthorpe. The statute was not made for that cause.[3] But it was made wholly for the advantage of those who have reversions expectant on the death of tenants of this kind, where the tenants desire to lose the tenements [by collusion]. And we pray judgment whether we ought not to be received, since the tenements are about to be lost, and we have shown to the Court that the tenant holds only for life and also that the reversion belongs to us.

{Bereford, C.J.[4] Where aid is granted by the Court, that takes nothing from the [other] party; but where aid is granted by the party, that is another affair.}

Bereford, C.J. There are but three forms in which estates can be limited: reversion, descent, remainder. Here, however, the deed that you have produced gives you no help in any of these three ways. Wherefore etc. For it talks about a descent [to you] where you are a stranger to those to whom the preceding grant is made. Moreover, when a man prays to be received to defend his right and produces a deed, one ought to see whether that deed would enable him to recover by action. But by this deed you never could have an action. Therefore it seems that this deed will avail you nothing, unless you can show to the Court some other muniment.[5]

Malberthorpe. Sir, you ought to have regard to Jordan's intention, which is expressed in the deed. It says 'I will and grant that the said tenements descend'; and this word 'descend' is a mere slip,[6] to which you should pay no heed when the expressed intention is that

[1] Stat. Westm. II. c. 3.
[2] Or 'by necessity.'
[3] Or 'does not give this case.'
[4] One book ends the case at this point with the following sentence.
[5] The word 'muniment' seems to have been corrupted, and then 'averment' was substituted for it.
[6] Observe the variant *mescription* (clerical error).

decès Marie et Marie.[1] Et demandoms jugement. Et dautrepart si nous fussoms einz, nous eussoms Jordan barré per my ceo fet, et nous demandoms jugement si nous ne devoms estre receu.

Ber. Jeo vous face un tiel fet 'Jeo voille qe vous eiez tute ma terre après mon decès' averez vous par taunt ma terre (*quasi diceret non*) ?

Et[2] les part[ies] acord[erent] etc.

35B. SERIAUNT *v.* BANYNGHAM.[3]

Un William porta son bref vers un Jone et dit en les quex il n'avoit entré si noun par un tiel qe a tort et sanz jugement disseisi un tiel son piere, qe heir il est.

Jon dit qe il ly ne disseisi point. Prist etc. A quel jour Jon fit defaute. Par qey le demandant pria seisine de terre. Survint un William et dit qe Jon qe fit defaute n'avoit rienz en les tenemenz si noun terme de vie, et le fee et le dreit fut le soen. Et pria d'estre receu etc.

Pass. Issint pout checun homme du peple venir et prier d'estre receu a defendre son dreit si il n'estut plus dire qe vous ne dites.

Berr. Vous dites trop covertement. Mès si vous volez estre receu, dites coment vostre dreit.

Fris. Nous vous dioms q'il y avoit un Thomas de R. qe fut seisi de ceux tenemenz, qe par sa chartre dona mesmes les tenemenz a Jon q'ore fet defaute a terme de sa vie, et après le decès Jon qe les tenemenz remansent a une Marie a terme de sa vie, et après la mort Marie qe les tenemenz avantdiz remansent a une Marie et a ses heirs a toux jours. Et ore sont ambedeux les Maries deviés et W. est frere Marie a qy le remayndre se fit. Et issi son dreit par ceu fet. Et issint prie il d'estre receu.

Pass. A ceo ne deit il estre receu, qe nous avoms porté nostre bref d'entré en supposant par nostre bref qe Jon n'ad entré si noun par un S. qe a tort et sanz jugement disseisi nostre piere, qe heir nous sumes. Dount son dit est tot en traverser ; par qey, s'il fut receu, ceo ne servereit d'autre rien si noun a nostre bref abatre. Par qey il ne deit estre receu en abatement etc.

[1] apres la mort J. et J. *B* (*over erasure*). [2] *Ins.* au dreyn *B*, *L* ; *sim. P.*
[3] Text of this second version from *R*.

after the deaths of the two Maries we should hold the tenements. So we pray judgment. Besides, if we were 'in' we could bar Jordan by this deed. Judgment, whether we ought not to be received.

Bereford, C.J. I make you a deed saying 'I will that you have all my land after my death': would you thereby have my land? (Expected answer, No.)

In the end the parties made accord.[1]

35b. SERIAUNT *v.* BANYNGHAM.

One William brought his writ against one John, saying 'into which he had no entry save by (*per*) such an one [*X*] who wrongfully and without judgment disseised his father, whose heir he is.'

John said that [*X*] did not disseise the demandant's father: ready etc. On the [next] day John made default. Wherefore the demandant prayed seisin of the land. One William intervened, and said that John, who made the default, had nothing in the tenements, save for term of life, and that the fee and the right were his. And he prayed to be received etc.

Passeley. In that way anyone you please might come and pray to be received to defend his right, if it were not necessary to say more than you say.

Bereford, C.J. You plead too covertly. If you wish to be received you must say how the right is yours.

Friskeney. We tell you that there was one Thomas of R. who was seised of these tenements, and who by his charter gave them to John (who now makes default) for the term of his life, and after his death they were to remain to Mary for her life, and after her death to [another] Mary and her heirs for ever. And now both Maries are dead, and William [the intervener] is the brother and heir of [the] Mary to whom the remainder [in fee] was made. And so it is his right by this deed. And so he prays to be received.

Passeley. To that he ought not to be received; for we have brought our writ of entry, alleging thereby that John had no entry save by one [*X*] who wrongfully and without judgment disseised our father, whose heir we are. So what [the intervener] says goes wholly to traverse [our writ]; and, if he were received, that could serve no other purpose than the abatement of our writ. Therefore he ought not to be received for the abatement [of our writ].

[1] No, the demandant recovered.

Malm. Nous avoms mostré coment Jon n'ad qe terme de vie, et coment le dreit est a nous, et coment il veut perdre les tenemenz par collucioun. Par qey nous prioms estre receu.

Berr. Vous priet etc. par force de ceu fet. Mès veet si vous fusset par voye d'action qe ceu fet vous vaudroit.

Herle. A ceu prier etc. qe prier eyde est auxi come voucher a garrant en son cas. Mès s'il fut receu il ne pout autre chose dire ne fere forqe abatre nostre bref, et ceo serreit grante duresse.

Malm. Vous assignez, a ceo qe vous dites, grant duresse si vostre bref fut abatu. Uncore i ad il greindre duresse de cest part, qe si nous ne seoms receu nous perderoms nostre dreit [1] et nostre voucher. Et la ou deux duresses i sount [2] la meyndre est a elire,[3] et meindre duresse est ceo qe vous fuissés a vostre bref [4] en le *post*, la ou vous puissez avoir vostre recoverer si dreit en eiez, qe nous osté de nostre dreit. Qar un bref mauveys q'est malement conceu et par collusioun n'est mye duresse ne [5] qe il se abate. Et nous voloms averer qe Jon n'avoit rienz en le tenemenz le jour du bref purchacé si noun a terme de vie du lees T. Par qey nous prioms d'estre receu etc.

Herle. Si Jon q'ad fet defaute fut issi et veusit prier eyde de vous ou vous voucher a garrant, il ne serreit pas receu a l'un ne a l'autre. Dount, depus qe il ne vous pout mener en eyde par force de ley, vous par vostre prier ne par vostre venue devez estre receu. Et d'autrepart statut fut fet de amenuser delays, qe veut qe nul voucher seit receu hors de la line ; mès, s'il fut resceu, ceo serreit en anoytement [6] de delays, et ceo est encontre statut. Par qey il etc.

Migg. Ceo serreit grant duresse qe par cele collusioun entre vous et le tenant fussoms barrez de nostre dreit. Mès q'il i eyt collusioun il piert bien, qe s'il veusit avoir pledé ove vous il pout avoir abatu vostre bref. Par qey par cele collusioun ne devoms nostre dreit perdre. Et prioms etc.

Herle. S'il fut resceu, il ne pout autre voucher qe cely par my qi il cleime estat. Mès ore est cely hors de degrees de nostre bref ou le voucher n'est mye suffrable de ley. Depus dount qe le vouch[é] ne serreit mye acceptable par qei il piert qe nul qe par my ly cleime serra receu.

[1] *Om.* dreit *R.* [2] issount *R.* [3] alire *R.* [4] *Om.* bref *R.* [5] *Om.* ne (?). [6] enhaucement (?).

Malberthorpe. We have shown how John has only term of life and how the right is in us, and how [John] desires to lose the tenements by collusion. Therefore we pray to be received.

Bereford, C.J. You pray [to be received] by the force of this deed. But consider whether that deed would avail you if you were bringing an action.

Herle. [He ought not to be received] on this prayer. For [a prayer to be received] is in the circumstances like a voucher to warranty. But, if he were received, he could say and do nothing except abate our writ, and that would be a great hardship.

Malberthorpe. You assert that there would be great hardship if your writ were abated. Yet there is greater hardship on our side; for, if we be not received, we shall lose our right and our voucher. And where there are two hardships, the less should be chosen. It would be a less hardship if you were put to bringing a writ in the *post*, in which you could have your recovery (if right you have), than that we should be ousted from our right. For it is no hardship that a bad writ, conceived badly and by collusion, should be abated. We will aver that John had nothing in the tenements on the day of writ purchased save term of life by the demise of Thomas. Therefore we pray to be received.

Herle. If John, who has made default, were here, and wished to pray aid of you or vouch you, he would not be allowed to do either one or the other. So, as he could not bring you here by an aid-prayer by force of law, you ought not to be received upon your own prayer and your own intervention. Besides, a Statute [1] was made for the diminution of delay and it provides that no voucher be received out of the line; but, if you were received, that would increase delays and would be contrary to the Statute. Wherefore etc.

Miggeley. It would be a great hardship if by this collusion between you and the tenant we were precluded from our right. That there is collusion is quite clear; for, if [John] had desired to plead against you, he could have abated your writ. We ought not to lose our right by this collusion. So we pray [to be received].

Herle. If he were received, he could vouch no one except him from whom he claims estate. But that person is outside the degrees of our writ, and so a voucher of him is not allowed by law. Thus, as his vouchee could not be accepted, it is plain that no one claiming through [that vouchee] should be received.

[1] Stat. Westm. I. c. 40.

Scrop. S'il serra receu il ne pout autre chose fere qe nostre bref abatre.

Malm. Qey savez vous? Et d'autrepart nous sumes en cas de statut qe i n'avoit en ceux tenemenz qe terme de vie, et nous sumes venuz avant jugement et prioms benefitz de statut.

35c. SERIAUNT *v.* BANYNGHAM.[1]

Un bref d'entré foundu sur la diseisine fust porté vers un tenaunt et fust le bref dedenz les[2] degreez. Le tenaunt fist defaute. Survynt un Johan et pria d'estre receu etc. par le graunt un Thomas qi graunta les tenemenz etc. a tot sa vie, et[3] après soun decès descendrent[4] a J. et a ses heirs. Et mist avaunt fait qe ceo testmoigna.

Toud. S'il soit r[eceu] c'est pur bref abatre, et le tenaunt mesme si ad affermé les degreez.[5] Jugement, s'il deive estre r[ece]u.

Friss. Vous veez bien la collusion du tenaunt qe voet de gree perdre les tenementz, et en nostre persone demoert le fee et le dreit et sumes venuz avaunt jugement, et prioms etc.

Herle. Si vous serretz[6] r[ece]u ceo serroit par statut; mès statut fust fait pur ij. choces: pur remedie et pur deleis[7] ouster. Mès, s'il fust r[ece]u, nous averoms[8] en taunt delay qe nostre bref se abatereit, qe serroit contrari a statut.

Malm. De ij. duresses la meindre est a eslire; mès meyndre duresce est qe vostre bref se abate qe nous seoms ousté de nostre voucher, ou qe nous[9] seoms pas r[ece]u a defendre nostre dreit par la defaute celuy qe nul power ad a perdre.[10] Jugement.

Berr. S'il serroit r[ece]u ceo serroit[11] par my l'especialté, qe voet qe le dreit luy descende[12] après le mort un qe tient a terme de vie, et si[13] est estraunge purchaceour et demaunde par my le taille en le descendre.[14] Et si homme demande en le descendre il covent q'il soit prevé au doun com heir en la taille;[15] si en le remeyndre donqe

[1] Text of this third version from *A*: compared with *Q*. [2] le *A*. [3] *Ins.* qe *Q*. [4] deces dec' *Q*. [5] *Ins.* du bref *Q*. [6] soetz *Q*. [7] delaies *Q*. [8] averioms *Q*. [9] *Ins.* ne *Q*. [10] nad de perdre *Q*. [11] *Ins.* a defendre soun dreit et ceo serreit *Q*. [12] seit desc' *Q*. [13] sil *Q*. [14] decendere *Q*. [15] Et chescun taille est en le decendere remeyndre ou reverti et covient qil seit prive al donour ou a ses heirs issint prive al donour *Q* (*instead of preceding clause*).

Scrope. If he were received, he could do nothing but abate our writ.

Malberthorpe. What do you know about that? Besides, we are in the statutory case, for [John] has only a term for life, and we have intervened before judgment. We pray the benefit of the Statute.

35c. SERIAUNT *v.* BANYNGHAM.

A writ of entry *sur disseisin* was brought against a tenant; and it was a writ 'within the degrees.' The tenant made default. One John intervened and prayed to be received, alleging a grant by one Thomas to [the tenant in the action] for his life, and after his death the tenements were to 'descend' to John and his heirs. And he produced a deed which witnessed this.

Toudeby. If he be admitted, it will be to abate the writ, and the tenant himself [by making default] has admitted [our statement of] the degrees. Judgment, whether he ought to be received.

Friskeney. You see the collusion of the tenant, who desires to lose the tenements of his own free will; and the fee and the right abide in our person, and we have appeared before judgment, and we pray [to be received].

Herle. If you are to be received, that must be by Statute. But the Statute was made for two purposes: to give remedy and to prevent delay. Here, however, if he be received, we shall be delayed, insomuch that our writ will be abated, and that would be contrary to the Statute.

Malberthorpe. Of two hardships the lesser should be chosen; but it is a smaller hardship that your writ be abated than that we be excluded from our voucher, or that we be not received to defend our right because of the default of one who [by law] had no power to lose [the tenement]. Judgment.

Bereford, C.J. If he is to be received that must be by virtue of the specialty which says that the right is to 'descend' to him after the death of a tenant for life. And so he is stranger and purchaser, and yet demands by virtue of a 'tail' in the descender. But if a man demands in the descender, he must be privy to the gift as an heir in the 'tail';[1] and if he demands in the remainder he must do so by a

[1] See among our variants a longer but not very lucid clause.

covent il q'il demaunde par especiauté qe prove le remeyndre.[1] Et vous demaundez en le descendre ou vous estes estraunge purchaceour et nient privé al doun ;[2] issint qe par vostre especiauté nul dreit poet vester en vostre persone. Par qei il semble qe vous ne devetz point estre r[ece]u etc. qe vostre dreit est nul.

Malm. Qaunt il luy graunta le fee, donqes en ascune persone demorra le dreit ; mès ne mye en la persone celuy qe graunta ; donqes[3] en la persone celuy a qi le graunte se fist[4] et a qi le tenaunt a terme de vie se attorna, coment qe l'especiauté ne parle des termes usueles.[5] Jugement, si nous ne devoms estre r[ece]u.[6]

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 78, Norf.

Robert, son of Robert le Seriaunt de Suthfeld, by William Tebaud his attorney, offers himself on the fourth day against John, son of Agnes de Banyngham, of a plea of a messuage and two acres of land in Banyngham which he claims as his right etc. And he [John] comes not, and heretofore made default after he had appeared here in court and had put himself upon a jury of the country, to wit, on the quindene of Michaelmas last past, so that the sheriff was commanded to take the tenements into the King's hand and to summon him [John] to be here at this day to hear judgment. And the sheriff now returns (*mandat*) that the land is taken into the King's hand etc. and that [John] is summoned etc.

And hereupon comes one Simon de Felebrigge and says that the tenements are his right and that John has and had at the day of the purchase of Robert's writ nothing in them save for the term of his life ; for he says that in truth one Thomas, son of Simon de Wycton, was long ago in seisin of the tenements in his demesne as of fee etc., and from his seisin, long before the writ was purchased, granted and gave the tenements to John, to hold to John for his whole life, and granted that after John's decease the tenements should descend (*descenderent*) to Mary, daughter of the late Robert de Hastingges de Aylesham, to have and to hold for her whole life, and after the death of the said Mary granted that the tenements should

[1] especialte et par certeyn paroles compris deynz la especialte *Q.* [2] prive du saunk ne a doun *Q.* [3] ergo *Q.* [4] et a qi le dreit fu conu *Q.* [5] especialte parle des termes qe ne sount mie usueles *Q.* [6] *Ins.* et sic pendet etc. *Q.*

specialty which proves a remainder.[1] And here you demand in the descender where you are a stranger and a purchaser and not privy to the gift,[2] so that by the specialty, which you yourself produce, no right could vest in your person. Thus it appears that you ought not to be received, for your right is null.

Malberthorpe. When the donor granted the fee, then the right must have been in somebody. But it could not have been in the grantor; so it must have been in the grantee, to whom the tenant for life attorned, albeit the words of this specialty are somewhat unusual. Judgment, whether we ought not to be received.

Note from the Record (*continued*).

descend (*descenderent*) to Mary, daughter of Roger Bygod de Felibrigge, to hold to her and her heirs and assigns well, peaceably and heritably, and granted that he [Thomas] and his heirs would warrant and defend the tenements to John for his whole life, to Mary daughter of Robert for her whole life, and to Mary daughter of Roger, her heirs and assigns, against all folk for ever. And he [Simon] produces one 'part' of an indented charter made under the name of Thomas which witnesses the gift and grant in form aforesaid. And he says that Mary and Mary are already dead; and that he [Simon] is the brother and heir of Mary, daughter of Roger; and that for this reason the reversion belongs to him; and he prays that, by the default of John, made by collusion, he [Simon] may not lose the tenements, but that he be received to defend his right in this behalf.

Robert says that Simon ought not to be received in this behalf to defer (*prorogandum*) Robert's seisin; for he says that he demands the tenements against John as his [Robert's] right [and] inheritance, into which John has no entry save by John Eustas de Felmyngham, who thereof unjustly disseised Roger de Suthfeld, brother of Robert, whose heir [Robert] is; and this form of entry Robert is ready to aver.

Afterwards Simon withdrew (*recessit*) and did not prosecute his assertion (*dictum*) in this behalf. Therefore it is considered that Robert recover his seisin against John son of Agnes by default, and that John be in mercy.

[1] Or 'by a specialty and certain words comprised in the specialty.'
[2] Or 'privy in blood or to the gift.'

PLACITA DE TERMINO PASCHE ANNO REGNI REGIS EDWARDI FILII REGIS EDWARDI TERCIO.

1A. BERNAKE *v.* MONTALT.[1]

Quare impedit, ou purchasour prist soun title de presenter un tenaunt en dower qe tient le manier a qy l'avowesoun etc. en dower en dreit le feffour: ou piert qe jeo n'avera mye bref al evesqe sauncz affermer dreit en ma persone.

William de Bernak porta le *quare impedit* vers[2] Robert de Mouhaut etc. et dit q'une Isabel de Beaumont[3] qe le manier de C. tient en dower de dreit Robert de Tristishal,[4] a quel manier l'avowesoun est appendaunt, presenta un soun clerk etc. par qi mort etc. Le quel R. en ceo après la mort Isabel entra com en sa reversioun, et le manier ovesqe l'avowesoun a nous dona, et issint appent a nous a presenter.

Toud. Il ount counté qe a eaux appent a presenter, et ount assigné q'une Isabel tient le manier en dower et presenta, et ne lient le presentement par nul qi estat de dreit de presenter avoit,[5] com de heir ou de soun purchaz.[6] Jugement, si par tiele demoustraunce title de presenter en lour persone pussent affermer. Estre ceo, la ou il dient q'ele presenta etc. com appendaunt etc. ceo ne pount il dire, qar soun dower de manier et d'avowesoun luy fust assigné en la chauncellerie com un gros, par qei a cele eglise com appendaunt ne poet ele presenter. Et del houre qe lour title defaut, jugement.

Migg.[7] Nous avoms counté coment Isabel, qe tient le manier, a qi etc., presenta com del dreit R. de T., a qi la reversioun etc.;[8] et vous dioms qe un Hoghe de B. baroun Isabel en temps le Roy H.

[1] Text from *A*: compared with *D*, *M*, *P*, *Q*, *T*, *X*. Headnote from *A*. [2] *Ins.* Sire *M*, *P*. [3] Bount *A*; Is. de Beaumont *D*; Johane de Beaund' *M*; Ys' Bealmound *P*; J. de Beaumount' *Q*. [4] Tretessale *M*, *P*; Triarshall' *Q*; Triteshale *D*. [5] qi estat de dreit avoit a presenter *M*; *sim. P*. [6] heir ou de purchacour *D*. [7] Mugg *Q*. [8] *Ins.* de mesme le manier et del avowesoun appent et coment apres la mort Isabel R. nous enfeffa ut supra *M*, *P*; *sim. T*.

PLEAS OF EASTER TERM IN THE THIRD YEAR OF KING EDWARD II. (A.D. 1310).

1A. BERNAKE *v.* MONTALT.[1]

Semble that in *quare impedit* a purchaser from the heir is allowed to take his title in a presentation made by the doweress. Discussion of the cases in which the impedient in *quare impedit* can obtain a writ to the bishop without showing any title in himself.

William of Bernake brought the *quare impedit* against Robert of Montalt and said that Isabella [Daubeny], who held a manor in dower as of the right of Robert of [Tatishale] (to which manor the advowson is appendant), presented a clerk of hers etc. by whose death [the church now is vacant]; and the said Robert after the death of Isabella entered as in his reversion and gave it us, so it belongs to us to present.

Toudeby. They have counted that it belongs to them to present, and have assigned that one Isabella held the manor in dower and presented; and they do not lay the presentation in anyone who had an estate of right to present by inheritance or purchase. Judgment, whether by such a count they can affirm a title to present in their person. Moreover, whereas they say that [the doweress] presented etc. as appendant etc., that they cannot say; for her dower of the manor and the advowson was assigned to her as a gross in the Chancery, so that to this church as appendant she could not present. So, since their title fails, we crave judgment.

Miggeley. We counted that Isabella who held the manor, to which [the advowson was appendant], presented in the right of Robert of [Tatishale], to whom the reversion of the manor and advowson belonged; and we tell you that after her death Robert enfeoffed us as above;[2] and we tell you that one Hugh [Daubeny], husband of

[1] Proper names from the record. The second report is in some respects fuller.
[2] This clause is not in all our books.

presenta com appendaunt, et un A. en temps le Roy Johan presenta com appendant; et del hure qe nous avoms moustré tut temps le appendaunce,[1] et il ne moustrent coment l'avowesoun est desapendaunt[2] du manier, demaundoms jugement, et prioms bref al evesqe.

Herle. Vous assignetz pur tittle[3] appendaunt[4] ceo qe n'est pas tittle; et en prove[5] de ceo q'ele ne presenta come appendaunt, nous avoms moustré coment soun dower du manier et de l'avowesoun luy fust assigné en la chauncellerie, q'est especial assignement et[6] a destrure vostre cause, q'ele presenta com un gros etc., et nyent com appendaunt. Et demaundoms juggement de vostre counte q'est insufficient.

Berr. C'est al actioun, qar il lient lour counte par resoun de appendaunt, et vous[7] dites qe ceo[8] ne poet estre appendaunt.[9]

Herle. Nous destruoms lour tittle,[10] et prioms bref etc.

Berr. Ceo plee est de tiel nature qe celui qe meutz prove[11] meutz avera.[12] Unqore lour dreit est plus cler qe le vostre, qe[13] vous ne affermez en vous nul dreit, fors[14] chaloungetz lour counte de ceo q'il n'est pas sufficient. Coment[15] vodretz vous, qe nul dreit[16] n'avez moustré, avoir bref al evesqe (*quasi diceret nullo modo*)? Estre ceo, il est[17] purchaçour, et s'il desporte[18] cel[19] presentement a ore, il est forsclos a toux jours.

Pass. Par un malveys counte abatu ou par nounsuyte ou par aultre maniere[20] jeo averey bref al evesqe, et si n'ai jeo nul dreit moustré en ma persone.[21]

Migg. Nyent semblable qaunt homme plede un excepcioun delatorie et qaunt homme plede[22] un excepcioun peremptorie. Et del houre qe nous avoms moustré nostre dreit de presenter, le quel dreit ne poet estre defet par nul assignement en la chauncellerie q'il allegge, ne[23] avowesoun severé du manier,[24] demaundoms jugement.

Et sic ad iudicium[25] etc.[26]

[1] *Om.* et un . . . appendaunce *A*, *D*, *Q*, *T*; *ins. M*; *sim. P*, *Q*. [2] severe *D*, *M*, *P*, *Q*. [3] *Ins.* de *A*. [4] appendaunce *M*, *P*, *Q*. [5] desprove *Q*. [6] *Om.* et *A*; *ins.* et *Q*; *ins.* et qest *M*, *P*. [7] *Ins.* le delaiez et *M*, *P*. [8] et deliez qe ceo *D*; et deliez qe ceste *T*. [9] ut supra *M*, *P*. [10] Nous destrums la cause de lour dreit *M*; *sim. P*; nous destourboms lour title *T*. [11] provera *D*, *M*, *P*. [12] *Ins.* mais *D*, *M*, *P*, *T*. [13] vostre en taunt qil ount dit ut supra et *M*, *P*. [14] einz *M*, *P*. [15] *Ins.* donqes *M*, *P*. [16] *Ins.* en vous *M*, *P*. [17] se fet *M*. [18] *Semble* depporte *A*; desport *D*; perde *P*. [19] *Rep.* cel *A*. [20] autre plusours enchesouns *M*, *P*. [21] *Ins.* sic in proposito *M*, *P*. [22] *Ins.* a *A*. [23] un *A*, *T*; une *D*; ne *M*; ne nule *P*. [24] *Ins.* et *A*. [25] patriam *D*. [26] et habuit diem in Oct. S. Trin. *M*.

Isabella, presented to the church as appendant in the time of King Henry [III.], and that one A. did the like in the time of King John; and, since we have shown appendancy from all time, and they do not show how the advowson is disappendant of the manor, we demand judgment and pray a writ to the bishop.

Herle. As title for the appendancy you assign what is no title; and in proof that she did not present as to an appendancy we have shown how her dower of the manor and the advowson was assigned to her in the Chancery by way of special assignment, and this goes to destroy your cause [of action], since she presented as to an advowson in gross, and not to one that was appendant. We therefore demand judgment of your count, which is insufficient.

Bereford, C.J. That [plea] goes to the action [not the form of the count], for in their count they relied on an appendancy, and you say that there can be none.

Herle. Yes, we destroy their title. We pray a writ [to the bishop].

Bereford, C.J. This action is of such a kind that he who proves best shall have best.[1] And [the demandant's] right is clearer than yours; for you affirm no right in you, but merely challenge their count on the ground of insufficiency. How can you who have shown no right claim a writ to the bishop? That cannot be. Besides [the plaintiff] is a purchaser, and therefore if he now loses this presentment he is foreclosed for ever.[2]

Passeley. But a man who has shown no title in his person will have a writ to the bishop if a bad count is abated or if there is a nonsuit and in other cases.

Miggeley. But there is a difference between pleading a dilatory and pleading a peremptory plea. And since we have shown our right to present, and it cannot be defeated by any assigmnent [of dower] in the Chancery, such as he has alleged, and the advowson has not been severed from the manor, we pray judgment.

So to judgment [and a day is given on the octave of Trinity].

[1] We might say 'he who proves most will get most.' In other words, relatively good right is right enough in such an action. One or other of the parties will have a writ to the bishop, so the court cannot be passive.

[2] Being purchaser and not having presented, he has no writ of right.

1B. BERNAKE *v.* MONTALT.[1]

William Bernard porta soun *quare impedit* vers Sire Robert de Mohaut, et counta qe a tort ne luy soeffre etc. covenable persone a les deux parties del esglise de N. qe a sa donesoun appent; et pour ceo atort, qe a lui appent a presenter, par la resoun qe une Isabelle tyent le manoir de P. a terme de sa vie en temps le Roi etc. del droit un A. etc. La quele Isabelle presenta a les deux parties etc. un soun clerc etc. qe a soun presentement etc. en temps mesme le Roy, par qi mort les dites deux parties se voiderent, et autrefoiz se voiderent, et ele presenta etc. par qi mort etc. est ore voide. Dount après la mort cele Isabelle, A. entra come en soun droit en le dit manoir ensemblement ove l'avowesoun. Le quel A. de cel manoir ensemblement ove l'avowesoun enfeffa Jon Bernard a avoir et tenir a luy et a ses heirs. Par quel doun Jon fuist seisi. De Jon descendy le droit del manoir ensemblement ove l'avowesoun etc. a William Bernard come au fuiz et heir, q'ore porte cestuy bref. Issint appent a luy a presenter, et issint destourbe yl a tort etc.

Toud. Sire, vous avetz entendu coment il ad counté en ceste *quare impedit*, q'est un bref de droit, et ne ount mye lié seisine de droit, mès seisine de la femme qe tient a terme de vie, qe n'est mye acordaunt a lour actioun. Jugement du counte.

Hengh. Nous demorroms en jugement sour ceo.

Herle. Vostre counte n'est mye meyntenable, qar chescun counte veot estre acordaunt al actioun, soit ceo de droit, soit ceo en la possessioun; et, desicome vostre actioun est en le droit, et la possessioun de tenant a terme de vie, q'est desacordaunt al actioun, jugement.

Migg. Nous sumes purchassours et ne poms d'autre possessioun counter mès des presentements la femme qe tient a terme de vie.

Scrop, Justice. En cas purchassour en assise de novel diseisine rec[overa] droit. S'yl perdisit par l'assise, yl serroit saunz recoverer a remenaunt.

Ber. Vous sovent yl mye del Counte de Nichole,[2] qe n'avoit autre seisine mesqe par diseisine, et recovera le present[ement]?

[1] *Vulg.* p. 72. Text from *B* (Hil.). [2] Counte Nich' *B*.

1b. BERNAKE *v.* MONTALT.[1]

William Bernake brought his *quare impedit* against Sir Robert of Montalt, and counted that wrongfully does he not suffer him to present a proper parson to two parts of the church of N. which belong to the plaintiff's gift: and wrongfully, because it belongs to him to present, since one Isabel held the manor of P. for term of her life in the time of King etc. as of the right of one A., and the said Isabel presented to the two parts a clerk of hers, who on her presentation [was admitted] in the same King's time; upon whose death the two parts fell vacant, once and again, and she presented a clerk, upon whose death they now are vacant; and after her death A. entered as in his right into the manor together with the advowson, and of the manor with the advowson enfeoffed John Bernake to hold to him and his heirs; and by this gift John was seised; and from him the right of the manor together with the advowson descended to [the plaintiff] as son and heir[2]; and so it belongs to him to present, and [the impedient] wrongfully disturbs him.

Toudeby. Sir, you have heard how he has counted in this *quare impedit*, which is a writ of right; and what they have laid is, no seisin of right, but the seisin of a woman who held for term of life, and that does not accord with their action. Judgment of the count.

Ingham. We will abide judgment about that.

Herle. Your count is not maintainable, for every count should accord with the action, be it droiturel, be it possessory; and, since your action is droiturel and the possession [that you lay is only that] of a tenant for life, and this is disaccordant with the action, we demand judgment.

Miggeley. We are purchasers, and we cannot count upon any possession, except the presentments made by the woman who held for life.

Scrope, J. There are cases in which a purchaser will recover right in an assize of novel disseisin: if he lost by the assize he would be without any other recovery.

Bereford, C.J. Do not you remember the case of the Earl of Lincoln? He had no other seisin but by disseisin, and recovered a presentation.

[1] From a single manuscript.

[2] But see our note from the record.

Herle. Sire, ceo fuist en autre cas de diseisine. Le disseisour cleyme fee et droit tauntqe la disseisine soit atteint ; mès en ceo cas il ount[1] conu en counte qe la femme tient a terme de vie, quele seisine n'est mie possessioun de droit ; mès s'il ne eussent mye desclos l'estat la femme en countant, le counte eust eté de meillour fourme. Jugement.

West. Par ceo counte ren ne prendrez, qar si vous fuistes a demaunder le manoir entier par bref de droit ou autre bref, yl covendroit qe vous liassetz en counte countant possessioun de droit, ou vous n'averez mye actioun par bref a recoverir l'entier saunz lier la possessioun de droit ; nyent plus les appendauntz al manoir.

Pass. ad idem. Ceuz presentementz faites par la femme tenaunte a terme de vie ne serront mye title en assise de drein present ; a moult plus fort en le *quare impedit.*

Migg. Nous avoms counté, a quey vous ne responez nyent. Jugement de vous come de noun deffendutz.

Herle. Nous demandoms jugement de ceo counte. Et si vous agardetz le counte bon, nous dirroms assez.

Ber. Voilletz demorrer en nos jugements a pert et a gayn.

Herle. Nous le mettoms avaunt al counte, et vous prioms qe vous pernetz etc.

Migg. Autre counte ne poms aver, qar sy nous seyoms ousté de ceo counte, nous avoms perdu actioun. Et pur ceo nous demorroms en jugement si nostre counte etc.

Et pour ceo qe s'yl eussent demorré en jugement il eussent recovery le presentement, yl disoient qe la ou il ount pris lour title del presentement I[sabelle] et ount counté q'ele presenta etc. come appendant al manoir de P., Sire nous vous dyoms qe le Roy fuist seisi del manoir de P. par resoun del nounage N. ; dount le Roy par sa lyveré assigna le manoir etc. en noun de douwere et assigna l'avowesoun etc. en allowanse d'autre avowesoun, et issint fut cele avowesoun assignee a lui come un groos et ne mye come appendant. Et il ount lié cel presentement pur luy a soun title come appendaunt. Jugement, de lour counte. Et sour ceo voucherent record de la chauncellerie qe cele femme resceut cele avowesoun come un gros del assignement le Roy.

Migg. Sire, en temps Hugh de T. cele avowesoun fuist tenu come appendaunt. Après la mort cele I[sabelle] Robert de T. entra cel

[1] oun *B.*

Herle. That case of disseisin is different. A disseisor claims fee and right so long as he is not convicted of the disseisin. Here, however, they have confessed in their count that the woman held for life, and therefore her seisin was not possession 'of right.' If they had not disclosed the woman's estate in their count, the count would have been in better form. So judgment.

Westcote. By such a count you will take nothing, for if you were demanding the manor as a whole by writ of right or other writ, you would, when counting, have to lay a possession 'of right,' for you shall not have an action by [such a] writ to recover the whole without you lay the possession as 'of right': and what holds good of the manor as a whole holds good of the appurtenances.

Passeley on the same side. These presentments made by a woman who held for life would not be a title in a darein presentment, and *a multo fortiori* they are not in a *quare impedit.*

Miggeley. We have counted and you have not answered. We demand judgment against you as undefended.

Herle. We demand judgment of this count, and, if you award the count good, we will say enough.

Bereford, C.J. Are you willing to abide judgment for good and all?

Herle. Our objection goes to their count, and we ask you to take it [as such].

Miggeley. We could not have any other count, and, if we are deprived of this count, our action is lost. So we demur in judgment whether our count etc.

And because, if [the impedient] had demurred in judgment, [the plaintiff] would have recovered the presentation, [the impedient's counsel] said:—Whereas they take their title from Isabel's presentation and have counted that she presented as [if the advowson were] appendant to the manor, Sir, we tell you that the King was seised of the manor of P. by reason of the nonage of N., and by his livery assigned the manor etc. by way of dower and assigned the advowson in lieu of another advowson; and so this advowson was assigned to her as a gross and not as appendant. And they by way of title have laid a presentation as [to an advowson] appendant. Judgment of their count. Upon this we vouch a record of the Chancery to show that this woman received the advowson as a gross by the King's assignment.

Miggeley. Sir, in the time of Hugh of T. this advowson was held as appendant. After Isabel's death Robert of T. entered the manor and

manoir et tyent l'avowesoun come appendaunt; dount, depuis qe avaunt le temps I[sabelle] et après le temps touz jours l'awoseson appendant al manoir, n'entendoms mye qe vous puissetz dire qe la femme le tyent come un gros sauntz ceo qe vous ne moustrez especialté q'il est fait appendant etc.

Ber. Vous avietz conu d'ambepart qe I[sabelle] tient le manoir del assignement le Roy, mès unqore n'avietz mye prové q'ele le tient come un gros.

Pass. Conissez q'ele tient le manoir ove l'avowesoun par l'assignement le Roy, et nous serroms tost a un.

Ber. Pur rien qe vous avietz unqore dit, vous estes unqore tout estraunge taunt qe vous avietz affermé le droit del avowesoun en vostre persone.

Toud. Les excepciouns sount al counte abatre, dount ne covent mie qe nous moustroms nostre droit a celui qe counte un malveys counte.

Pass. ad idem. Sil eussent counté en ceo *quare impedit* saunz seisine de presentement, le counte eust esté abatable. Dount si nous pussoms defere les presentemens I[sabelle], les presentements ne lour dona[1] mye title de possessioun. Dount est auxint come il eussent counté saunz presentement. Ergo etc.

Scrop. Jeo le vous moustre qe Is[abelle] ne presenta mye come appendaunt; qe jeo pose q'ele eust esté deforcé del avowesoun, ele n'eust mye recovery sy noun par assignement le Roi etc. Ergo etc.

Scrop, Justice. Coment puist l'avowesoun q'est appendant estre fait un gros en le temps I[sabelle] qaunt yl fuist appendant avaunt et après ? (Et nota prerogativam Regis.[2])

Ber. Vous pledetz sour l'abatement de counte, et vous ne avetz mye unqore moustré coment le droit a vous appent.

Toud. Nous nel moustroms pas a la partie, taunt q'il eyent fait un bon counte; mès nous le dirroms a la court volunters qaunt mester serra.

Berr. Quidetz vous avoir bref al evesqe saunz moustrer qe vous avietz droit en l'avowesoun ? Nanil, tout fut trové par enqueste ceo q'il dit.

Herle. Einz qe nous eyoms bref al evesqe nous moustroms volunters nostre droit, et ne mye a la partie taunt q'il eyent counté un bon counte.

[1] *Sic B.* [2] This note appears as part of the text, *B.*

held the advowson as appendant, so that before and after her death the advowson has always been appendant to the manor, and we do not think that you can say that she held it as a gross, unless you show some specialty by which it is [once more] made appendant.

Bereford, C.J. You have allowed on both sides that Isabel held the manor by the King's assignment; but you [for the impedient] have not yet proved that she held it as a gross.

Passeley. Let them confess that she held the manor with the advowson by the King's assignment, and then we shall soon be at one.

Bereford, C.J. For anything that you have yet said [the impedient] is still a total stranger, [and so he will be] until you have affirmed the right in his person.

Toudeby. Our exceptions go to abate his count, and we have no need to show our right to one who counts a bad count.

Passeley on the same side. If in this *quare impedit* they had counted without laying any seisin by presentation, their count would have been abatable. So if we can defeat Isabel's presentations by showing that they give them no title, the case will stand as if they had counted without alleging any presentation.

Scrope. I will show you that Isabel did not present as [to an advowson] appendant; for I put case that she had been deforced of the advowson; she could not have recovered except by virtue of the King's assignment. Therefore etc.

Scrope, J. How could the advowson appendant be made a gross in Isabel's time when it was appendant before and after? (Note the King's prerogative.) [1]

Bereford, C.J. You plead to the abatement of the count, and you have not yet shown how the right belongs to you.

Toudeby. We shall not show that to the [other] party, until they have made a good count; but we are quite willing to show it to the Court at the proper time.

Bereford, C.J. Think you to get a writ to the bishop without showing that you have right in the advowson? Not so, even though all that you say were found by inquest.

Herle. Before we have a writ to the bishop we will gladly show our right; but not to the [other] party, until they have counted a good count.

[1] This remark we suppose to come from an annotator.

Berr. La court vous entend; mès si ren devetz dire, vous dirretz a la partie.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 35, Norf.

Robert de Monte Alto was summoned to answer William de Bernake of a plea that he permit him to present a fit parson to two parts of the church of Attleburgh which are vacant and belong to his gift. William, by his attorney, says that the manor of Plecy with the appurtenances, to which the advowson of the said two parts pertains, was sometime in the seisin of one Isabella Daubeny, who held that manor with the appurtenances for the term of her life of the inheritance of one Robert de Tateshale; and that by reason of the manor she presented to the said two parts one William de Sherewode her clerk, who on her presentation was admitted and instituted in time of peace, in the time of [Henry III.]; and afterwards, the said two parts being vacant, she presented thereto one Hamo de Warenne her clerk, who on her presentation was admitted and instituted in time of peace, in the time of [Henry III.]; and that by his death the said two parts are now vacant; and he [William] says that after the death of Isabella, the said Robert de Tatteshale, to whom the reversion belonged, was seised of the manor with the appurtenances, to which the advowson of the said two parts belongs, and thereof enfeoffed William, whereby William was seised of the manor with the appurtenances to which the advowson etc. belongs; and for this reason it belongs to William to present to the said two parts; and that Robert unlawfully impedes him: damages, two hundred pounds.

Robert, by his attorney, after formal defence, says that he ought not to answer him on this writ to such a count; for he says that when anyone claims a presentation by this kind of writ he needs must lay (*ligare*) the right of presenting by counting of the presentment of one having the right; and whereas William says that the presentation belongs to him by reason of the said presentations made by Isabella, who had nothing of right in the

2. TICHMARSH *v.* STANWICK.[1]

Ad terminum qui preteriit, ou l'averement fust receu q'il n'avoyt rien etc. non obstante q'il mist avaunt fait soun auncestre.

Un bref d'entré *ad terminum qui preteriit.* Le tenaunt vowcha a garraunt, qe vient en court et garrauntit et demaunda ceo q'il avoyt du lees.[2]

[1] *Vulg.* p. 70 (a briefer report). Text from *A*: compared with *B*, *D*, *L*, *M*, *P*, *T*, *X*. [2] *Om. sentence and ins.* Herle. Quey avietz de ceo qe les tenemenz furent issi lessez *B*.

Bereford, C.J. The Court understands you; but if you ought to say anything, you must say it to the [other] party.

Note from the Record (*continued*).

advowson, but only a term of life, he [Robert] demands judgment; and he further says that the manor with the said advowson was sometime in the seisin of one Hugh Daubeny, husband of Isabella; and that after his death the advowson was assigned to her in dower as a gross (*tanquam quoddam grossum*) in the Chancery by the King; and that she afterwards presented her said clerks to the said two parts, whereof the advowson had been assigned to her as a gross in manner aforesaid and not as pertaining to the manor. Wherefore he [Robert] demands judgment of the count.

William says that the said advowson pertains to the manor whereof he now is seised; and he says that the manor was sometime in the hand of Hugh Daubeny, who presented to the said two parts, by reason of the manor, one Godfrey Giffard his clerk, who on his presentation was admitted in time of peace, in the time of [Henry III.]; and that on the last preceding voidance of the two parts, one Isolda de Arderne, by reason of the manor being in her seisin, presented to the two parts one Lawrence of St. Alban her clerk, who on her presentation was admitted in time of peace, in the time of King John; wherefore he says that, albeit the advowson was assigned to Isabella in dower by the King as aforesaid, nevertheless the advowson was not thereby separated from the manor to which it theretofore always pertained, and that this manor was in the seisin of Isabella at the time of the presentations made by her; and, since Robert in his answer lays (*ligat*) no right of presentation in his person, and William sufficiently shows that the presentation belongs to him for the reasons aforesaid, he [William] demands judgment and a writ to the bishop.

Successive adjournments to hear judgment on the octave of Trinity, the octave of Michaelmas, and the quindene of Hilary are recorded; but no judgment appears.

2. TICHMARSH *v.* STANWICK.[1]

In an *ad terminum qui praeteriit* the demandant produces a lease by deed made to the ancestor of the tenant. The tenant may plead that his ancestor had nothing by the lease without first confessing or denying the deed.

In a writ of entry *ad terminum qui praeteriit* the tenant vouched to warranty. The vouchee appeared and warranted and asked what [the demandant] had to show the lease.

[1] Proper names from the record.

Scrop. Veez cy un escript[1] qe testmoigne qe nostre ael[2] qi seisine etc.,[3] lessa a un H. vostre auncestre a terme de sa vie.

Herle. Qe H. nostre auncestre n'avoit riens du lees C. vostre ael.[4] Prest etc.

Scrop. Nous avoms mys avaunt a vostre request le fait a[5] vostre auncestre, qe testmoigne etc. *ut supra.*[6] Jugement, si a nul averement encountre le fait, a quel vous estes privé, devetz avenir.

Herle.[7] Poet ensemble estere[8] qe ceo soit un fait feet a nostre[9] auncestre et q'il n'avoit riens du lees.[10] {Mesqe[11] jeo r[espondisse] al fet, jeo puisse doner mesme le respounse qe jeo face ore. Par qei il ne covent nyent conustre le fait ne dedire.}

Scrop. Donqes grantés le fait et puis voydez.[12]

Malm. Si le tenaunt mette avaunt fait, ceo serroit ascune chose; mès la ou le demaundaunt mette avaunt fait, ceo ne bare mye l'averement, le quel est a travers a[13] l'actioun.

Et l'averement fust receu q'il n'avoit rien de son lees etc.,[14] non obstante le fait qe testmoigne les tenementz estre lessez a terme de la vie l'auncestre le tenant par sa garrantie etc.[15]

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 28d, Northam.

Henry de Tychemersh and Joan his wife, by Geoffrey de Tychemersh their attorney, demand against Alan de Stanewygge a messuage, fifty acres of land, and one acre of meadow in Parva Lyvedene[16] iuxta Benifeld as their right and the inheritance of Joan, into which Alan has no entry unless after the demise which William de la Musche, grandfather of Joan, whose heir she is, made thereof to Ivo de la Musche for a term that has passed, and which after that term ought to revert to Henry and Joan etc. Henry and Joan say that William, grandfather [of Joan], was seised of the tenements [as of fee and right[17]] in time of peace, in the time of King Henry [III.], taking thence esplees to the value etc.; and from William the grandfather the right descended to one William as son and heir, and from him to Joan the now demandant as daughter and heir, and into which etc.

Alan, by Robert de Luffewyke his attorney, comes; and heretofore he said that he held the tenements for the term of his life by the demise of

[1] *Ins.* endente *L.* [2] *Ins.* de *D, L, M, P, T.* [3] nous avoms counte *L.* [4] *Ins.* ne rien ne receust *M, P*; ne ren de ly ne resceut *L.* [5] *Om.* a *A, L*; *ins. D, M, T.* [6] *Ins.* et puis demandastes oy del fait *B.* [7] Ber. *B.* [8] Herle. Stant simul *L.* [9] vostre *A, D, T*; le fet nostre *L.* [10] *Ins.* vostre ael etc. *M*; *sim. L, P.* [11] This version of Herle's speech from *B.* [12] Donqes poiez granter et voider qe vostre auncestre navoit rien de lees etc. par qei il semble qe vous devez respondre al fet *M*; *sim. L, P.* [13] est a traversaunt *M, P*; est en traversant *L.* [14] *Om.* qil . . . etc. *A, D*; *ins. M.*; *sim. L, P.* [15] *Om.* qe testmoigne . . . etc. *A, D*; *ins. M*; *sim. B, P.* [16] Mod. Livedon, south of Benefield. Tichmarsh, Stanwick, and Lowick are not far off. [17] Interlined.

Scrope. See here a writing[1] which witnesses that our grandfather, upon whose seisin [we count], leased to your ancestor for the term of his life.

Herle. Our ancestor had nothing by your grandfather's lease.[2] Ready etc.

Scrope. At your request we have produced the deed made to your ancestor which witnesses as aforesaid ;[3] we pray judgment whether you can get to an averment against the deed to which you are privy.

Herle. The two things can stand together : namely that this deed was made to our ancestor and that he had nothing by the lease. Even if I answered to the deed, I could still give the same answer that I am giving now ; so there is no need for me to confess or deny [the deed].[4]

Scrope. Then admit the lease and afterwards avoid it.

Malberthorpe. If the tenant [in an action] produced a deed, that would be one thing ; but where a demandant produces a deed, that does not bar an averment which goes to traverse the action.

The averment 'nothing by his lease' was received, notwithstanding the deed which witnesses that the tenements were leased to the ancestor of the tenant by warranty.

Note from the Record (*continued*).

William de la Musche of Luffewyke, and that the reversion thereof after his, Alan's, death belongs to the same William ; and in form aforesaid he vouched William to warrant.

William now comes by summons, and in form aforesaid warrants etc. ; and he defends their right (*ius suum*) when etc., and he says (*bene defendit*) that William, the grandfather, did not demise the tenements as Henry and Joan by their writ suppose ; and thereof he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of Michaelmas.

Afterwards, on the octave of Trinity, A. R. 4, Henry comes by his attorney, and likewise William in his proper person ; and William renders the tenements to Henry. Therefore it is awarded that Henry recover his seisin thereof against Alan, and that Alan have of the land of William to the value in the form aforesaid, and that William be in mercy for that he did not render before etc.

This seems to be the reported case, although the issue that is tendered and accepted is not precisely that which the report would have led us to expect.

[1] Some books add 'indented.'

[2] Some add 'and received nothing from him.'

[3] One book adds 'and then you demanded oyer of the deed.'

[4] The two parts of this speech come from different books.

3A. HELLE *v.* IPSWICH (PRIOR OF).[1]

Dum infra etatem, ou il dit qaunt a parcel il entra par altre et qaunt al el de plein age.

Entré *dum fuit infra etatem* ou les tenemenz furent doné a ij. jointement, et l'un et l'autre alienerent taunt come l'une fuist deinz age etc.

En un bref *dum fuit infra etatem* porté vers un Priour, qe dit qe soun predecessour n'entra mye par le demaundaunt [2] soul, einz par luy et par aultres [3] joynttement, nient només en le bref: jugement du bref.

Berr. Vous ne poetz mye abatre le bref si vous ne luy poetz doner meillour bref.

Et pus le Priour respount et dit qaunt a la moyté qe soun predecessour entra par un aultre,[4] et qaunt a l'autre moyté il [5] fust de pleyn age,[6] prest etc.

3B. HELLE *v.* IPSWICH (PRIOR OF).[7]

Une femme deinz age et un autre de pleyn age tyndrent certeynz tenemenz joyntement, et puis joyntement lesserent outre en fee. L'eynesse devia. La pusnee porta soun bref d'entré *dum fuit infra etatem*.

Denom. Ele suppose par soun bref qe nous entrames par luy sole. Et nous dyoms qe nous entrames par lui et une autre, Olyve. Jugement du bref.

Pass. Si vous voilletz nostre bref abatre, vous nous durrez bon bref.

Denom. Si cestuy bref fuist meyntenu, il nous oustereit de nostre voucher.

Berr. Donet luy bon bref, qar autrement n'abateret my son bref.

Denom. Ele avera bon bref de la moigté de sa seisine demene, et del autre moigté de la seisine Olyve.

Berr. A tiel bref n'avendr[eit] nyent, qe ceo serroit bon respouns

[1] Text from *A*: compared with *D*, *L*, *M*, *P*, *T*. [2] par la femme qe demande *M*; *sim. L*. [3] un autre *L*, *M*, *P*; soun aunc' *T*. [4] un C. sa parcenere *M*; *sim. L*, *P*. [5] ele *M*, *P*. [6] age qaunt ele le lessa etc. et alii econtra etc. *M*, *P*; age qaunt ele lessa etc. *L*. [7] *Vulg.* p. 70. Text from *B* (Hil.).

3A. HELLE *v.* IPSWICH (PRIOR OF).[1]

A joint alienation is made by two parceners. After the death of one, the other tries to recover the whole by a *dum fuit infra aetatem* as having been under age. The pleas open to the tenant discussed.

In a writ of entry *dum fuit infra aetatem* brought against a Prior, [the tenant] said that his predecessor did not enter merely through the demandant but through her and another (not named in the writ) jointly; and he prayed judgment of the writ.

Bereford, C.J. You cannot abate the writ, unless you can give him a better writ.

Afterwards the Prior answered and said as to one moiety that his predecessor had entry by another person,[2] and as to the other moiety that the demandant was of full age [when she leased]: ready etc. [Issue joined.]

3B. HELLE *v.* IPSWICH (PRIOR OF).

A woman under age and another of full age held certain tenements jointly, and then jointly leased them in fee. The elder died. The younger brought her writ of entry *dum fuit infra aetatem.*

Denom. She supposes by her writ that we entered only by her, and we say that we entered by her and another, namely Olive. Judgment of the writ.

Passely. If you would abate our writ, you must give us a good writ.

Denom. Were this writ maintained, we should be deprived of our voucher.

Bereford, C.J. Give him a good writ, for otherwise you shall not abate his writ.

Denom. She will have a good writ for one moiety on her own seisin, and for the other on the seisin of Olive.

Bereford, C.J. To such a writ she could not get, for it would be

[1] Proper names from the record. Our three reports hardly give the same result.

[2] Or 'by her parcener.'

a tiel bref q'il n'entra mie en la moigté par cest A., et issint abaterez vous soun bref.

Denom. En droit de la une moigté ele ne fust pas seisi issint q'ele pout lees faire. En droit del autre moigté nous fumes deinz age. Prest etc.

3c. HELLE *v.* IPSWICH (PRIOR OF).[1]

Une Alice porta sun bref d'entré *dum fuit infra etatem* vers le Priour de N. e demanda un mees e une carué de terre etc.

Laufar. L'entré qe nous avoms, si avoms par cestui Alice e Sarre ; e demandoms jugement de cestui bref : e si ele voet dedire, prest etc.

Herle. Vous avez conu l'entré ; e vous dioms qe Sarre est morte ; par quei nous prioms seisine de terre.

Laufar. Vous ne poez dedire qe nous entrames par Sarre ; et nous demandoms jugement de cestui bref.

Bereford. Si vous volez abatre cesti bref, donez meillour bref.

Laufar. Desicom ele lessa ceux tenemenz ensemblement ove Sarre, il serreit inconvenient de lei qe ceste A. rescoverast le tut par cestui bref, e demandoms jugement.

Hervi a *Laufare.* Responez autre chose.

Sire, qaunt a la moité, de plein age le jour du lees fete, e prest del averer ; e de lautre moité, demorroms en voz jugements.

Herle. Soul seisi : prest del averer.

Alii contrarium.

Note from the Record.

De Banco Roll, Easter, 3 Edw II. (No. 181), r. 43, Suff.

Hugh de Helle de Cavenedisshe and Agnes his wife, who is of full age, by their attorney, demand against Hugh, Prior of the Holy Trinity of Ipswich, a messuage in Resshemere [2] by (*iuxta*) Tudenham, into which the Prior has no entry except after (*post*) the demise which Agnes while she was under age made thereof to William de Brecles, sometime Prior of the Holy Trinity of Ipswich.

The Prior, by his attorney, comes and defends their right (*ius suum*) when, etc. ; and he says that the messuage was in the seisin of Agnes and of one Olive her sister, who held it jointly as parceners and heirs, and after-

[1] This version from *Y* (f. 91d). [2] Mod. Rushmere near Ipswich.

a good answer to such a writ that [the tenant] did not enter into a moiety by this [Agnes], and so you would [once more] abate her writ.

Denom. As to one moiety she was not seised so that she could make a lease. As to the other [she] was [not] within age.[1] Ready etc.

3c. HELLE *v.* IPSWICH (PRIOR OF).

One [Agnes] brought her writ of entry *dum fuit infra aetatem* against the Prior of N., and demanded a messuage and a carucate of land etc.

Laufer. The entry which we have, we have by this [Agnes] and [Olive]; we pray judgment of this writ. If she will deny, ready etc.

Herle. You have confessed the entry; and we tell you that [Olive] is dead. Therefore we pray seisin of the land.

Laufer. You cannot deny that we entered by [Olive]. We demand judgment of this writ.

Bereford, C.J. If you would abate this writ, give a better writ.

Laufer. As she leased these tenements along with [Olive], it would be an absurdity in law if she recovered the whole by this writ. We demand judgment.

Stanton, J. to *Laufer.* Answer over.

[*Laufer.*] As to one moiety, of full age on the day the lease was made; ready to aver. As to the other moiety, we will abide your judgments.

Herle. Solely seised; ready to aver.

Issue joined.

Note from the Record (*continued*).

wards they jointly enfeoffed thereof the said William, sometime Prior, his predecessor; so he says that, as to a moiety of the messuage of the purparty of Olive, Agnes can claim nothing etc.; and as to the other moiety he denies that at the time of the demise made to William his predecessor, Agnes was under age, for she was of full age; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of Michaelmas.

[1] But the text says 'We were within age.'

4A. MIDDELTON *v.* VAVASSUR.[1]

Dette porté vers le baroun et la femme, ou il defendit par sa ley, et qaunt al contract la femme ne sereit chargé.

Un bref de dette porté par executours vers un homme et sa femme de aprist[2] fait a eaux deux[3] par le testatour.

Hedon. La ou il demaunde vers nous et devers nostre femme,[4] qaunt a nostre femme, nous ne devoms estre chargé, et qaunt a nous, nous defendoms par nostre ley.[5]

Et fust a ceo r[eceu], non obstante qe Denom dit qe ceo fut un action qe[6] ne poit estre severee.[7] Et nota si ceo eust esté le contract la femme sole, il ne ust esté receu soul etc.

{Et[8] sic nota qe la ley le baron en plè de dette sufficit pro toto, mès si ceo fut de contracte fete a la femme sole, il eussent fet lour ley et l'un et l'autre, et sic diversitas.}

4B. MIDDELTON *v.* VAVASSUR.[9]

Un A. porta son bref de dette vers un homme et sa femme, et dit q'a tort ly deivent xl. marcs d'argent,[10] et pur ceo a tort qe la ou mesme cele la femme avoit obligé etc.

Met.[11] Qey avet de la dette ?

Denum. Seute bone.

Hengh.[12] Le baroun vous respount qe nul dener ne vous deit. Prest a fere etc.

Denum. Qey respount la[13] femme ?

Hervi. La femme n'ad mye[14] propreté ; dount cely a qy la propreté est fra la[15] ley, et par taunt sa femme asseutz. Mès autre serreit si ele se ust obligé taunt com ele fut soule et fut empledé ove son baroun.[16]

[1] Text from *A* : compared with *D*, *L*, *M*, *P*, *T*. [2] aprest *D*. [3] al homme et a la femme *P*. [4] *Ins.* et de aprest fet a nous deux etc. *M* ; *sim. P*. [5] deffendoms encontre eux et encontre lour suwite *M* ; *sim. L*, *P*. [6] et *L*. [7] *Om.* non . . . severee *A*, *D* ; *ins. M* ; *sim. P*. [8] Note from *M* ; *sim. P*. [9] Text from *R* (Pasch.) : compared with *S*, *T* (Hil.). [10] et demanda x. m. etc. *S* ; x. s. etc. *T*. [11] Ing. *S*, *T*. [12] Ing. *S*, *T*. [13] Quey r' a la *S*, *T*. [14] noil *S* ; nul *T*. [15] sa *S*, *T*. [16] *Om.* last sentence *S*, *T*.

4A. MIDDELTON *v.* VAVASSUR.[1]

Debt against husband and wife for money lent to them. The husband alone makes law for both.

A writ of debt was brought by executors against husband and wife for a loan made to the two of them by the testator.

Hedon. Whereas he demands against us and our wife, as regards our wife we ought not to be charged, and as regards ourself we defend by our law [against them and against their suit].

He was received to this, although *Denom* said that this was an action that could not be severed. And note that if this had been the contract of the woman [when] sole,[2] he would not have been received alone etc.

{So[3] note that in a plea of debt the husband's law is sufficient for the whole; but if this had been for a contract made [with] the woman [when] sole, they would both have made law: so note the distinction.}

4B. MIDDELTON *v.* VAVASSUR.

One A. brought his writ of debt against a man and his wife, and said that wrongfully they owe him forty marks of money, and wrongfully for whereas this woman bound herself etc.

Ingham.[4] What have you for the debt?

Denom. Good suit.

Ingham. The husband answers that no penny does he owe you. Ready to make [his law].

Denom. What says the wife?

STANTON, J. The wife has no property; so he who has the property shall make the law, and thereby the woman shall be absolved. But otherwise would it be if she had bound herself while she was sole and was impleaded with her husband.[5]

[1] Proper names from the record.

[2] Or 'of the woman only.' The French phrase is ambiguous.

[3] In some books the note takes this form.

[4] One book gives 'Met.'

[5] The last sentence may be a note, not a judicial dictum. It is not in all the books.

4c. MIDDELTON *v.* VAVASSUR.[1]

Deux executours porterent bréf de dette vers un homme et sa femme.

Hedon. Yl ount counté d'un contracte fet entre le testatour et nostre femme: la vous dyoms qe, sy nul contracte fuist fait par nostre femme, ceo fut encountre nostre gree et nostre volunté. Et n'entendoms mye qe a contractes faites par luy duraunt la coverture serra le baroun tenu a r[espoundre]. Et qaunt a nous, nous vous dyoms qe nul dener ne luy dey par reson de tiel contracte. Prest a faire etc.

Et fuist la ley r[ece]u saunz ceo qe la femme joyntte la ley ove lui.

Launf. Sire pur Dieu eyetz regarde, qe s'yl ne respoigne de la resceite sa femme nous serroms saunz remedie, qar, s'il face ore sa ley et nous portames nostre bref vers la femme qaunt elé serra sole, ele vouchereit cel record et issint serroms saunz recoverir.

Berr. Vous estes en cas de 'discas etc.'

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 259d, York.

Mauger le Vavassur and Agnes his wife were summoned to answer Adam de Middelton and John de Middelton, executors of the testament of Robert de Middelton, of a plea that they render to them forty-seven pounds and twelve shillings, which they unlawfully detain from them. The executors, by their attorney, say that whereas Robert, whose executors they are, on [4 Oct. 1306] Tuesday next after Michaelmas in 34 Edw. I. at York had lent (*accomodasset*) to the said Mauger and Agnes the said moneys to be paid to him at Easter next following, Mauger and Agnes refused to render the said moneys to Robert while he lived, and since his death still refuse to render them to the executors: damages, ten pounds.

Mauger and Agnes, by their attorney, come and defend tort and force

5. LE KEU *v.* LE KEU.[2]

Dower porté del assent cely vers qy le bref fust porté, ou il dit qe ceo fust d'altri dreit et demaunda jugement etc. Quere.

Une[3] porta bref de dower[4] vers Stephen de T. et M.[5] sa femme, et fust mesmes[6] celuy de qi assent ele demaunde.

[1] *Vulg.* p. 75. Text from *B*. [2] Text from *A*: compared with *D*, *L*, *M*, *P*, *T*. [3] *Ins.* femme *L*, *M*. [4] *Ins.* ex assensu patris *M*, *P*. [5] Estevene et Maud *L*. [6] *Ins.* celi Estevene *M*.

4c. MIDDELTON *v.* VAVASSUR.

Two executors brought a writ of debt against a man and his wife.

Hedon. They have counted of a contract made between their testator and our wife. We tell you that if any contract were made by our wife, it was against our will and pleasure, and we do not think that the husband is bound to answer to contracts made by her during the coverture. As to ourselves, we tell you that no penny do we owe him by reason of such contract. Ready to make [our law].

The law was received without the wife joining the law with him.

Laufer. For God's sake, Sir, consider our case! If he does not answer for the receipt by his wife, we shall be without remedy; for if he now makes his law, and we afterwards bring our writ against the woman when she is sole, she will vouch this record, and so we shall be without recovery.

Bereford, C.J. You are in the case of 'discas.' [1]

Note from the Record (*continued*).

when etc.; and well they 'defend' that they are not bound to them [the executors] in the said debt or in any penny etc., and this they are ready to defend against them and against their suit as the Court shall award.

Therefore it is awarded that Mauger and Agnes wage to them laws (*leges*) thereof with the twelfth hand; and let them come with their law (*lege*) here on three weeks from Michaelmas etc. Pledges for the law, Robert de Hedone of the county aforesaid and Simon of Cranesle of the county of Northampton.

Afterwards, on the morrow of the Purification in 4 Edward II., come the parties; and the said Mauger for himself and his wife here present (*pro se et uxore sua presente etc.*) made law etc. (*fecit legem etc.*). Therefore it is awarded that Mauger and Alice go thence without day etc., and that the said executors take nothing etc., but be in mercy.

5. LE KEU *v.* LE KEU.[2]

On marriage Son endows Wife with the assent of Father out of land held by Father and Mother in right of Mother. After Son's death Wife has no action for dower against Father and Mother, but perhaps can sue Father alone and obtain dower for his life.

A woman brought a writ of dower [*ex assensu*] against Stephen [Le Keu] and [Joan] his wife, and [Stephen] was the person whose assent was alleged.

[1] For this phrase, see above p. 25. It means 'Be wise another time.'

[2] This case is Fitz. *Dower*, 126. Proper names from the record.

Ingg.[1] Stephen n'ad riens en ceaux tenemenz demaundez, fors com del dreit sa femme ; et demaundoms jugement si par nul assent d'aultri dreit pussetz rien demaunder.

Malm. Et nous jugement depus qe vous avet conu l'assent, et vous estes mesme la persone qe assentit,[2] si nous ne devoms nostre dower recoverir, et hoc pro tempore.[3]

Denom.[4] Etienne ad tiel estat[5] q'il[6] poet aliener et charger[7] pur soun temps.[8]

Berr. Aultre est la ou homme se demet[9] et la ou il demurt seisi.

Hedon. Si E. fist defaute et M. vensist en court et priast d'estre receu ele defreit cel assent. Par qei etc.[10]

Malb. Vous dites qe c'est du dreit vostre femme. Coment de dreit etc. ? Ou par purchaz, ou par succession ?[11]

Ingg.[12] Le piere nostre femme morust seisi, après qi mort ele entra come fille et heir.

Et purceo qe l'actioun fust oscure ele fust nounsiwy. {[13] Set edo tut eust ele suwy q'ele ne prendreit rien etc. Et la cause pur ele fut nounsiwy fut pur ceo q'ele avoit conceu son bref vers le aron et la femme, ou la femme ne pout assentir si ele ne fut en ourt. Pur qei dit fut q'ele portast son bref vers le baron soule et recoverast[14] pur son temps.}

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 78, Ess.

Joan, wife that was of John, son of Stephen le Keu, by her attorney, demands against Stephen le Keu and Joan his wife the third part of two messuages, of a hundred and forty acres of land, of three acres of meadow, of thirty-two and a half acres of wood, and of four shillingworths of rent in

6A. COPE *v.* COLE.[15]

Dower, ou la femme fust receu al averement qe le baroun fust soul seisi, nient aresteaunt qe le tenaunt mist avaunt fyn qe prova le revers, a qy la femme fust party.

Une femme porta bref de dower vers un homme etc.

[1] Denon *L* ; J. de Ingham *M* ; J. de Hyngham *P*. [2] assentistes *M* ; assent *A* ; se assent *L* ; assenti *T*. [3] *Ins.* tuo *L*. [4] J. Denom. *M*, *P*. [5] Si Stevene aad si feble estat *L*. [6] *Ins.* ne *L*. [7] *Ins.* mes *L*. [8] *Ins.* put il aliener et charger *L*. [9] homme doune *L*. [10] receu ou par heritage ou par purchaz *A* (*and omit next speech*). Text from *M* ; *sim. L*, *P*, *T*. [11] ou par service ou par homage ou par purchaz *T*. [12] Hengh. *L*, *T* ; Hyngham *P*. [13] Note from *M* ; *sim. P*. [14] recovereyt *P*. [15] Text from *A* : compared with *D*, *M*, *P*, *T*.

Ingham.[1] Stephen has nothing in the tenements demanded save in right of his wife, and we pray judgment whether, by virtue of his assent, you can demand against him what he holds in right of another.

Malberthorpe. And since you have admitted the assent and are the very person who assented, we pray judgment whether we ought not to recover dower for your time.

Denom. Stephen has such an estate that he can[2] alienate and charge for his own time.

Bereford, C.J. But it is one thing where a man demits himself[3] and another where he remains seised.

Hedon. If Stephen made default, and [Joan] came into court and prayed to be received, she might defeat the assent. Wherefore etc.

Malberthorpe. You say that this is the right of your wife. How her right? By purchase or by succession?

Ingham. Her father died seised, and after his death she entered as daughter and heir.

And because the action was obscure [the demandant] was nonsuited. {And[4] I believe that even if she had continued her suit she would have taken nothing. And the reason of the nonsuit was this: she had conceived her writ against the husband and wife, whereas the wife cannot assent except in court; so she was told to bring her writ against the husband alone, and then she would recover for his time.}

Note from the Record (*continued*).

Markeshale, Bentaleye, and Chepingtolun, of which the said John, son and heir of Stephen, sometime husband of the said Joan [the demandant], by the assent of Stephen, his father, endowed her at the church door when he espoused her.

Here the entry ends. A space is left for a continuation of the enrolment.

6A. COPE *v.* COLE.[5]

A claimant of dower is met by a fine to which she was party tending to show that she and her husband were joint tenants. This is tantamount to 'Never so seised etc.'

A woman brought a writ of dower against a man.

[1] Or perhaps 'Denom.'

[2] Or 'Even if he had so feeble an estate he could.'

[3] Or 'where a man gives.' In the present case there is no tortious feoffment.

[4] This note is not in all of our books.

[5] Proper names from the record.

Ingg.[1] Le baroun la femme, de qi dowement ele demaunde, tient ceaux tenemenz joyntement ove sa femme q'ore demaunde com[2] lour joynt purchaz, qe mesme ceaux tenemenz donerent a nous, et pus conusterent[3] ceaux tenemenz estre soun dreit par bref de garrauntie de chartre ou la femme fust examiné;[4] et demaundoms jugement etc.

Denom.[5] Taunt amounte qe soun baroun ne fust pas issint[6] seisi q'ele pout demaunder dower etc. Soul seisi, prest etc.[7]

Et fust a ceo receu etc.[8]

6B. COPE *v.* COLE.[9]

Une femme porta son bref de dowere.

Ingham. Dowere ne doit ele avoir, qar son baron, de qi dowement ele demaunde, n'avoyt ren en lez tenemenz, si noun joynt ove sa feme de lour joynt purchas, sur quei se leva un fyn ov relees et quiteclamaunce. Jugement.

Denom. Taunt amounte unqes seisi qe dowere la pout; et nous voloms averer q'il fut seisi en son demene com de fee issi que dowere la pout. Prest etc.

Et alii econtra etc.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 136d, Heref.

William Cope and Margaret his wife, by their attorney, demand against Walter Cole the third part of two messuages, of one virgate and of twenty-eight acres of land in Nethercobleton and Lullam as the dower of Margaret by the endo wment of Henry de Trayleghe, sometime her husband.

Walter by his attorney comes and says that William and Margaret can demand nothing in the tenements by the endowment of Henry; for he says that Henry and Margaret purchased the tenements jointly, to hold to Henry and Margaret and their heirs, so that Henry was not on the day on which

[1] Ingham *P*; Heng. *T*. [2] *Ins.* de *M*, *P*. [3] conustre *A*; coniserent *M*. [4] *Ins.* et confes de court *M*, *P*. [5] W. Denom. *M*, *P*. [6] soul *D*, *M*, *P*, *T*. [7] seisi issi qe dower le pout, qe si, prest etc. *P*. [8] non obstante fine, mes la fyn fut terte [trete] sur reles et quiteclamaunce *M*; *sim. P*. [9] Text from *L*.

Ingham. The woman's husband, on whose endowment she demands, held these tenements along with [her] as their joint purchase, and they gave them to us, and afterwards on a writ of *warantia cartae*, in which this woman was examined, they made conusance that these tenements were [our] right. We pray judgment.

Denom. That is tantamount to 'her husband was never so seised that she could demand dower.' He was sole seised: ready etc.

She was received to this {notwithstanding the fine; but the fine was drawn by way of release and quitclaim}.[1]

6B. COPE *v.* COLE.[2]

A woman brought her writ of dower.

Ingham. She ought not to have dower, for her husband, on whose endowment she demands, had nothing in the tenements except jointly with his wife by a joint purchase, upon which[3] a fine was levied with release and quitclaim. Judgment.

Denom. Tantamount to 'Never so seised that he could endow her.' We will aver that he was seised in his demesne as of fee so that he could endow her. Ready etc.

Issue joined.

Note from the Record (*continued*).

he espoused her or at any time afterwards solely seised of the tenements as of fee so that he could endow her; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the morrow of St. John Baptist.

It will be observed that as to the fine there is a material difference between our two reports; also that the issue on the record is not a simple 'Never so seised etc.'

[1] This last clause, which is not found in all the books, seems to imply that the result might have been different if the fine had purported to witness a gift.

[2] From a single manuscript.

[3] Or was it when they alienated that the fine was levied?

7A. TOFTES *v.* THORPE.[1]

Replegiari, ou piert qe le conisour ou soun heir serra receu al averement qe cely a qy la conisaunce fu fest fust unqes seisi, non obstante fin levé sour doun qe prove le revers ; et meintteint s'avowrie.

Nota qe parcener avera eyde de chose qe chet en descrès de sa purpartye.

Un Richard se pleynt q'un H. a tort prist ses avers.

Herle avowa par la resoun q'un W. tient certeynz tenemenz, dount le lieu etc., d'un B.[2] par homage etc., des queux services B. fust seisi par my la mayn W. com par[3] mye etc. De B. descendit a Robert com a fitz etc. De R., purceo qu'il deviast sauntz heir etc.,[4] resorti le dreit des services a Sarre come a aunte et heir, seore B., piere R. De S. descendi etc. a Johanne et a Alice come a filles et heir. De J. est isue H. qi avowe ore, issint qe la purpartie se fist entre H. et A.[5] sa parcenere, issint qe les services W. furent assignetz a la purpartie H., et pur le homage arere si avowe il[6] etc.

Will. Veetz cy W. sur qi vous avet avowé qe se joynt ove Richard, et dit q'il tient de B. ;[7] mès il vous dit qe après la mort B., Robert fitz et heir B. conust le manier de E.[8] estre le dreit M.[9] sa miere come ceaux[10] q'ele avoit de soun doun,[11] a quel manier nos services sount[12] agardauntz ;[13] et Margerie seisi etc. Jugement, si encountre la conisaunce pusset sur nous avowrie fair, depus qe vous estes un des heirs R. qe conust.

Herle. Vous dites qe M. est[14] seisi. Unqes seisi, prest etc.

Thoud. A ceo ne devetz avenir, qe ceo serroit a voyder la fyn.[15]

Herle. De chose comprise dedenz la fyn si serroit homme[16] ousté del averement. Mès la fyn ne fait pas mencioun de vos services. Et d'aultrepart, service de fraunctenement ne purra jammès vestir par my la[17] conisaunce avaunt l'attournement.[18] Et depus qe nous voloms averir qe M. ne fust unqes seisi, jugement.

Toud. La fyn veot qe M. conust le manier en demene et en service etc. et par taunt seisine supposé en la persone M.[19] Et nous

[1] Text from *A* : compared with *D*, *L*, *M*, *P*, *T*. [2] Berth. *L*. [3] *Rep.* par *A*. [4] de son corps *M*, *L*, *P*. [5] B. *A* ; Alice *P*. [6] *Ins.* sur H. *M*, *P* ; sur Will *L*. [7] *Ins.* etc. ut supra *M*, *P*. [8] *Ins.* en ceste court *M*, *P*, *L*. [9] Margery *M*, *P*, *L*. [10] ceo *M*, *P*. [11] *Ins.* en demene e serviz *P*. [12] furent *M*, *P*, *L*. [13] regardantz *M*, *P*, *L*. [14] *Corr.* fut. [15] femme *A* ; fyn *M*, *P*, *L*. [16] *Ins.* par aventure *M*, *P* ; par cas *L*. [17] par nul *M*, *P*. [18] vestir si noun par atturnement de tenant *L*. [19] *Om.* en . . . M. *L*.

7A. TOFTES *v.* THORPE.[1]

A fine of a manor *sur conusance de droit com ceo etc.* with clause of warranty does not without attornment vest in the conusee the right of the services of a free tenant of the manor. The heir of the conusor avows upon such a tenant and is encountered by the fine. He may aver that the conusee never obtained seisin by attornment.

One Richard complains that H. wrongfully took his beasts.

Herle avowed for the reason that one W. held certain tenements whereof the *locus in quo* [is parcel] of one B. by homage etc.; and that of these services B. was seised by the hand of W. as by [the hand of his very tenant]; and that from B. [the right of the services] descended to R. as son etc.; and that from R., because he died without an heir [of his body], it resorted to Sarah as aunt and heir, sister of B., father of R.; and that from Sarah it descended to Joan and Alice as daughters and heir; and that from Joan issued H. the present avowant, so that a partition was made between him and Alice his parcener, whereon the services of W. were assigned to the share of H. And for homage arrear he avows etc. [upon W.].

Willoughby. See here W. upon whom you have avowed and who joins himself to [the plaintiff], and says that he did hold of B. But he says that after B.'s death, R. son and heir of B., made conusance in this court that the manor was the right of Margery his mother as that which she had by [R.'s] gift, to which manor our services are regardant, and Margery was seised. We pray judgment whether contrary to the conusance you, who are one of the heirs of the conusor, can make avowry upon us.

Herle. You say that Margery [was] seised. Never seised. Ready etc.

Toudeby. To that you cannot get, for it would avoid the fine.

Herle. Of matters comprised in a fine, peradventure[2] a man is ousted from his averment. But the fine makes no mention of your services. Besides, service from free tenement can never vest by a conusance before attornment. And since we are ready to aver that Margery was never seised, we pray judgment.

Toudeby. The fine states that [the conusance was of] the manor in demesne and in service etc., and thus a seisin was supposed in the

[1] Perhaps this case is the basis of Fitz. *Droyt*, 33. See the second report and our note from the record, where the true proper names are given.

[2] The 'peradventure' is not in all books.

voloms averrir qe vos services sount appendauntz[1] al manier avauntdit. Jugement, si a aultre averement devetz avenir.

Berr.[2] Sur tiele maniere de conisaunce execucione ne poet estre siwy,[3] q'ele leva sur seisine precedent. Et d'altrepart, jeo vi qe le seignour de S.[4] conust le[5] manier etc. en demene en services[6] estre le dreit Piers de B.,[7] a[8] quel manier les services un Piers Perles furent agardauntz.[9] Et purceo qe P. Perles ne[10] voleit attorner, il[11] destreinit issint qe plee fust[12] entre eaux longe temps.[13] A chief de tour[14] le jugement passa pur le tenaunt encountre P., a qi le manier fust conu.[15] Et qaunt P. Perles vit q'il fust de luy quist,[16] il chevi[17] a Templers que ly[18] fesoint un escript a tenir de eaux par certeynz services. Pus après le conisour[19] siwy[20] bref de costumes et des services vers P. Perles[21] et recovereit[22] devers luy en le eire de H.[23] Et s'il[24] eust desclamé, il eust recovery le demene,[25] non obstante cognicione predicta. Par qei il covent qe vous r[espoignez] a la seisine.

Toud. Seisi. Prest etc.

Malm. Nous[26] prioms eyde de nostre parcenere. (Et habuit.)

{*Ber.*[27] alegga coment en altel cas celi qi conu un manoir estre le dreit un A. [et A. rendi le manoir al conisur et sa femme en fé taillé] a quel manoir les services B. furent regardants, qe B. unqes n'attorna [a A.] et le conisur porta bref de custumes et de services et recovera [de son primer estat], ou s'il ust desclamé, il ust recoveré par bref de dreit.}

7B. TOFTES *v.* THORPE.[28]

Un Willem se pleint qe Alice la Blunde atort prist ses avers, scil. ij chivals tieu jour etc.

[1] appurtenantz *D.* [2] Herle *T.* [3] ne se poet suwir *M*; ne poet siwer *P.* [4] Somery *L.* [5] un *P.* [6] en demene cum en demene et en serviz cum en serviz *P.* [7] Peres de Bromigeham *L.* [8] le *M, P, L.* [9] manier un Piers Parles tynt *M, P, L*; de quel manoir un Piers Parlees fut tenant *T.* [10] *Ins.* se *M, P.* [11] Sire P. de B. luy *M, P.* [12] durra *M*; dura *P, L.* [13] eux bien xxx. aunz en ceste court *M, P, L.* [14] court *T.* [15] P. de B. *M, P.* [16] qil fust delyverez *P*; quit' *T.* [17] aprocha *M, P*; se atturna de ces services *L.* [18] qil y *D*; Templers et chevi a eux, les queux Templers lui *M, P.* [19] le seignour de Somery *L.* [20] Jeo vy en après qe le seignour de S. par son consail etc. porta *M, P.* [21] *Ins.* en le eyre de H. *M, P*; de Herf' *L.* [22] recoveri *M*; *sim. P, L.* [23] *Om.* en . . . H. *M, P.* [24] et si lautre *M, P, L.* [25] ust eu son bref de dreit de cel desclamer *L.* [26] Malb. A cel averrement *M*; *sim. P, L.* [27] This version of Bereford's precedent from *X* with [interlineations]. [28] This version from *Y* (f. 169d).

person of Margery. And we will aver that your services are appendant to the manor. Judgment, whether you can get to another averment.

Bereford, C.J. Upon a conusance of this kind execution can never be sued, because it supposes a preceding seisin. On the other hand, I saw a case in which the Lord of S.[1] made conusance that a certain manor in demesne and service was the right of Peter of B.,[2] to which manor the services of one Peter Perles were regardant.[3] And because Perles would not attorn, Peter of B. distrained and there was a long plea between them, which lasted thirty years in this court.[4] At the end judgment passed for the tenant [Perles] against Peter, the conusee of the manor. And when Perles saw that he was quit of Peter of B., he approached the Templars and achieved to them,[5] so that they made him a writing [which said that he was] to hold of them by certain services. Then [I saw that] the conusor [the Lord of S., by the advice of his counsel] brought a writ of customs and services against Perles and recovered against him in the eyre of [a certain county]. And if [Perles] had then disclaimed, [the Lord of S.] would have recovered the demesne from him, notwithstanding the aforesaid conusance. So you must answer to the seisin.

Toudeby. Seised. Ready.

Malberthorpe. We pray aid of our parcener. (Aid granted.)

{Bereford, C.J.,[6] alleged a similar case in which one made conusance that a manor was the right of A. [and A. rendered it back to him and his wife in fee tail], and to this manor the services of B. were regardant, and B. never attorned [to A.], and the conusor brought a writ of customs and services and recovered [as of his first estate], and, if B. had disclaimed, the conusor would have recovered[7] by writ of right.}

7b. TOFTES *v.* THORPE.[8]

One William complains that Alice la Blunde[9] wrongfully took his beasts: to wit, two horses, on such a day etc.

[1] Perhaps 'Somery.' See the next report.

[2] Perhaps 'Bromigeham.'

[3] Some books say 'which manor Peter Perles held.' But this seems to be a mistake. He held of the manor.

[4] The thirty years do not appear in all books.

[5] Or 'attorned to them for his services.'

[6] This version of Bereford's precedent comes from a volume of condensed reports. An interlineator has supplied some additional facts, here given within square brackets. They may, however, be the outcome of speculation.

[7] That is, would have recovered the demesne.

[8] This report from a single, but good, manuscript.

[9] This is a fancy name.

Alice avowa la prise bone et resnable par la r[eson] qe Nichole de la Sale tient de Bertelmeu de C., auncestre etc., un mies e une carué de terre ove les appurtenances en N. par homage, fealté e par les services de la quarte partie de un fee de chevaler, dont le lieu ou la prise fut fete en est parcel; des queux services le dit Bertilmeu fut seisi par mi la main le dit N. com par mi etc. De B. descendi le droit des services e devoit etc. a Robert com a fiz e heir; de Robert a Johan com a fiz e heir; de Johan, pur ceo q'il morust sanz heir etc., resorti le droit des services a S. e M. com a auntes e heir, soers R. pere Johan. De S. descendi le droit de sa purpartie etc. a Agnes femme Johan de C. De Maude descendi le droit de sa purpartie a Alice com a fille e heir. Les queux Johan e Agnes assignerent ceux services a la dite Alice, qe ore avowe, en sa purpartie. E issi avowe Alice sur une Richeodde, cosin e heir Nichole, com sur sa verraye tenante.

Touth. r[espoundi] e dit qe a tiele avowerie ne puet ele atteyndre, qe ele ad dit qe B., commun auncestre Agnes e Alice, fu seisi de ceu service, e ad fet la descente a eux com a parceners de un heritage, e nule rien conu pur Agnes ne sun baroun; e issi la descente e l'avowerie contrariant. Et demandoms jugement.

Hervi. Alice ad dit qe lour commune auncestre fu seisi, desc[endant] a eux com as heirs, e dit outre qe ele resceut ceux services en sa purpartie par l'assignement Johan e Agnes sa femme. Queu mestier ad ele de rien conustre pur eux (quasi diceret non: et dixit) Willuby, responez autre chose.

[*Willuby.*] Nous[1] conussoms bien qe Bertelmeu fu seisi del manoir de N. e morust seisi. Après qi mort Robert entra com fiz e heir e ceu manoir dona e granta a Margerie sa mere e a ses heirs. E pus par bref de garrantie de chartre leva une fin en la court icy e obliga lui e ses heirs a la garrantie. E demandoms jugement, desicom le manoir fut par lour auncestre alïené en estrange mayn, si ele puisse com privé a celui R. avowerie faire en le manoir de N.

Hervi. Il puet estere ensemble qe Robert aliena le manoir auxi com vous dites, e qe celui Nichole de la Sale franc tenant del manoir ne se atturna unkes a Margerie ne a ses heirs de ses services, e uncore qe les heirs Robert puissent avowerie faire.

[1] q. d. non. et dix' Willuby r' autre chose nous Y.

Alice avowed the taking good and reasonable for the reason that Nicholas de la Sale held of Bartholomew of C. [her] ancestor, a messuage and a carucate of land with the appurtenances in N., by homage, fealty and the services of a fourth part of a knight's fee, whereof the *locus in quo* is parcel; and of those services Bartholomew was seised by the hand of Nicholas, as by [the hand of his very tenant]. From Bartholomew the right of the services descended and ought [to descend] to Robert as son and heir; and from him to John as son and heir; and from him, since he died without an heir [of his body], the right of the services resorted to S. and M. as aunts and heir, sisters of Robert, father of John. From S. the right of her purparty descended to Agnes, wife of John of C. From M. the right of her purparty descended to Alice as daughter and heir. And John and Agnes assigned these services to the said Alice, the present avowant, in her purparty; and so she avows upon one Richolda, cousin and heir of Nicholas, as upon her very tenant.

Toudeby answered and said that to such an avowry she could not get, for she has said that Bartholomew, the common ancestor of Agnes and Alice, was seised of this service, and has made the descent to them as parceners of one heritage and has made no cognisance [as bailiff] for Agnes or her husband. So the descent and the avowry are contrariant. Judgment.

Stanton, J. Alice has said that their common ancestor was seised, and has made a descent to them as heirs, and has further said that she received these services in her purparty by the assignment of John and Agnes his wife. What need had she to make any cognisance on their behalf? None. Willoughby, you must give another answer.

[*Willoughby.*][1] We confess that Bartholomew was seised of the manor of N. and died seised. After his death Robert entered as son and heir, and gave and granted this manor to his mother Margery and her heirs. Afterwards, upon a writ of *warantia cartae*, a fine was levied here in court, and he bound himself and his heirs to warranty. And, since the manor was alienated by their ancestor into the hands of a stranger, we demand judgment whether she can make avowry in the manor of N. as privy to Robert.

Stanton, J. It is not impossible that Robert alienated the manor as you say, and that Nicholas de la Sale, a free tenant of the manor, never attorned himself to Margery or her heirs for these services, so that the heirs of Robert could make avowry.

[1] The text at this point is somewhat ambiguous.

E pus a un altre jour vient Rycheodde e se joint au pleintif.

E *Willuby* rehersa coment Robert dona ceu manoir a Margerie sa mere enterement en demesne e en service, e par fin qe se leva sur bref de garrantie de chartre en temps le Roy Henri. (E mist avant partie de la fin a la court, qe ceo tesmoigna.) E demandoms jugement, desicom le manoir passa enterement en demesne e en service en la persone Margerie, si les heirs R. encountre la fin puissent [1] avowerie fere.

Herle. Nous avom avowé ceste prise sur une Rychodde, cosine e heir Nichole, e il ne dedient point la seisine nostre auncestre ne mettent avant nul barre, mès dient qe une fin se leva sur un bref de garrantie de chartre. E desicom nous voloms averer qe N. ne s'aturna unqes de ces services a Margerie, demandoms jugement e prioms return des avers.

E pus *Bereford* counta tieu counte, qe Sire Roger de Somery le viel granta le manoir de C. ove les appurtenanz a Sire Johan de Bremegeham, en quel manoir il lui avoit un tenant W. de Parlees; le quel W. fut wychous [2] e ne se voleit nent turner a Johan de B. Johan lui distreini. W. fist le [3] plevisement. E plederent xxx. anz; e au drein W. ala quites, e Johan en la merci. E pus par longe temps après vient l'eir Roger de Somery en le eyre de Salope e moustra ceste chose a sun conseil. Par quoi il porta son bref de custumes e de services vers W. de Parlees e rescovera. Issi dy jeo par de cea.

Hervy dit a *Touth.* Il vous covent aler plus près.

Touth. Qe N. de la Sale se atturna de ces services a Margerie: prest del averer.

Herle. Parti a ceste averement ne pooms estre sanz Johan de C. e Agnes sa femme nostre parcenere. Et prioms eide.

Et habuit, et dies datus etc.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 136, Norf.

John de Thorpe and Reginald Bule were summoned to answer Richard de Toftes why they took his beasts and wrongfully detained them against gage and pledge. Richard, by his attorney, says that John and Reginald, on [20 Oct. 1307] Friday next after the feast of St. Luke the Evangelist in 1 Edw. II., in the vill of Depedale, in a place called Bradhowedele, took a horse of his, and on [1 Nov. 1307] Wednesday next after the feast of the Apostles Simon and Jude in the said year, in the said vill of Depedale, in a

[1] puisse *Y.* [2] W. fut Wychous *Y.* [3] la *Y.*

Afterwards at another day Richolda came and joined herself to the plaintiff.

Willoughby rehearsed how Robert gave this manor to Margery his mother integrally in demesne and in service by a fine which was levied upon a writ of *warantia cartae* in the time of King Henry [III.] (And he produced to the court a part of the fine which witnessed this.) And [said he], since the manor passed integrally in demesne and in service into the person of Margery, we demand judgment whether the heirs of Robert can make avowry against the fine.

Herle. We have avowed this taking upon one Richolda, cousin and heir of Nicholas; and they do not deny the seisin of our ancestor, nor do they show any bar; but they only say that a fine was levied upon a writ of *warantia cartae*. And, since we will aver that Nicholas never attorned himself for these services to Margery, we demand judgment and pray a return of the beasts.

And afterwards Bereford C.J. told this tale:—Sir Roger de Somery the elder granted the manor of C. with the appurtenances to Sir John de Bremegeham. In that manor he had a tenant, W. de Parlees, who was vicious[1] and would not attorn to John de B. John distrained him. W. brought replevin, and they pleaded for thirty years; and at last W. went quit and J. was amerced. A long while afterwards the heir of Roger de Somery came to the eyre in Shropshire and showed this to his counsel. Whereupon he brought a writ of customs and services against W. de Parlees and recovered. And so say I in this case.

Stanton, J. said to Toudeby: You must get nearer than that.

Toudeby. Nicholas did attorn himself for these services to Margery: ready to aver it.

Herle. We can be no party to that averment without John of C. and Agnes his wife, our parcener. We pray aid.

He had it, and a day was given etc.

Note from the Record (*continued*).

place called Sakeland, they took two horses of his and impounded them, and detained them in pound against gage etc. until etc.: damages, a hundred shillings.

John and Reginald come by their attorney. And John answers for himself and Reginald and, after formal defence, avows the takings as rightful in the said place of Bradhowdele; for he says that one Henry de Sale held of one Bartholomew de Crek a messuage, a hundred acres of land

[1] See the text. He was recalcitrant.

Note from the Record (*continued*).

and sixty of marsh, in Depedale, whereof the *locus in quo* is parcel, by homage, fealty, and the service of a fourth part of a knight's fee, to wit, ten shillings to a scutage of forty shillings, and so in proportion; and that of these services Bartholomew was seised by Henry's hands; and that from Bartholomew the right of the service descended to one Sarra as daughter and heir, and from her to one Margery as daughter and heir, and from her, since she died without an heir of her body (*de se*), the right resorted to Margery and Isabel as cousins and heirs, sisters of Bartholomew; and from Margery the right of her purparty descended to one Robert as son and heir, and from him to John [the avowant] as son and heir; and from Isabel the right of her purparty descended to one Robert as son and heir, and from him to one Robert as son and heir, and from him to Roesia, wife of Edmund de Pakenham, and Cecilia, wife of Robert de Ufford, as sisters etc. and parceners of [the avowant]; and that a partition was made between these parceners; and that to [the avowant's] purparty were assigned Henry's services from the said tenements; and because the homage of one Richolda, cousin and heir of Henry, was arrear before the day of the taking, he avows the taking of one horse, and because she did not for this justify herself (*se per hoc non iustificavit*) [1], he avows the taking of the other two horses upon Richolda for the said homage.

Richolda is present in court and joins herself to Richard [the plaintiff]. And Richard and Richolda say that in truth Bartholomew de Crek was at one time seised of the manor of Crek with the appurtenances, whereof the said tenements and the *locus in quo* are parcel; and thereof he died seised; and that after his death one Robert succeeded him as son and heir; and

8A. GRAVESEND *v.* CHAUMBRE.[2]

Wast, ou piert qe si le tenaunt mette avaunt fait le auncestre le pleintif de joint tenaunce, le pleintif serra mye receu a dire soul tenaunt.

Un homme porta soun bref de wast vers un tenaunt a terme de vie.

Hedon. Nous avoms riens en ceaux tenemenz ou il assignent le wast si noun jointenaunce [3] ove nostre femme, nyent nomé en le bref. Jugement du bref. (Et mist avaunt fait qe testmoigna qe l'auncestre le pleintif avoit doné les tenemenz avantditz a celui vers qi etc. et a M. sa femme et a les heirs de lour ij. corps engendrez). [4]

Denom.[5] Nous voloms averer q'il fust soul tenaunt jour du bref purchacé, et aleggoms statut.[6]

[1] She disregarded the distress. [2] Text from *A*: compared with *D*, *M*, *P*, *T*, *X*. [3] joynt *M*, *P*. [4] qe ceo testmoigna *A*, *D*, *T*. Text from *M*; *sim.* *P*. [5] W. Denom *M*, *P*. [6] *Ins.* de coniunctim feoffatis *M*, *P*.

Note from the Record (*continued*).

that of the manor with the appurtenances, as well in demesne as in service, this Robert enfeoffed one Margery de Crek, his mother, so that afterwards in the court of Henry III., on the quindene of Michaelmas in A. R. 36, before his justices here, a fine was levied between them, whereby Robert confessed the manor, together with other tenements, to be the right of Margery as those which she had of his gift, to have and to hold to her and her heirs of him and his heirs for ever; and they say that by virtue of this gift and feoffment Margery was seised of the said services; and this they are ready to aver; and they crave judgment whether [the avowant] can avow the takings as rightful by (*de*) the seisin of Bartholomew.

John says that he cannot abide this averment without Edmund and Roesia, Robert of Ufford, and Cecilia, his parceners. So be they summoned to be here on the quindene of Michaelmas to answer together with him.

Process having been continued until three weeks from Easter in A. R. 5, Richard and Richolda come and also [the avowant]. And his parceners, Edmund, Roesia, Robert, and Cecilia, come not, and aforetime, to wit, on the morrow of St. Martin last, made default after essoin and after summons. So let [the avowant] answer without them.

[The avowant] says that, no matter what fine Richard and Richolda assert to have been levied between Robert and Margery, and no matter what feoffment Robert made to Margery, she never was seised of the said services by virtue of the fine or feoffment as Richard and Richolda say; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Michaelmas.

8A. GRAVESEND *v.* CHAUMBRE.[1]

The Statute 34 Edw I., which gives an averment of sole tenancy in reply to a plea of joint tenancy, does not extend to an action of waste in which the demandant is privy to the deed that has been produced.

A man brought his writ of waste against a tenant for term of life.

Hedon. In these tenements in which waste is assigned we have nothing save jointly with our wife, who is not named in the writ. Judgment of the writ. (He produced a deed which witnessed that the plaintiff's ancestor gave the tenements to [the tenant in the action] and his wife and the heirs of their two bodies begotten.)

Denom. We will aver that he was sole tenant on the day of writ purchased, and we rely on the Statute.[2]

[1] Proper names from the record. [2] Stat. de coniunctim feoffatis, 34 Edw. I.

Hedon. Cest averement qe vous tendetz [1] fust purveue et deit estre entendu la ou fait d'estraunge fust [2] mys avaunt, et nyent la ou il [3] soit privé al [4] fait et pout conustre ou dedire.[5] Mès vous estes privé a celui qi fait nous mettoms avaunt.

Hervi regarda le statut [6] et dit qe le statut ne fust pas garraunt a tiel averement a tiel [7] bref.

Et purceo qu'il ne pout dedire, agardé fust q'il ne prist rien par soun bref etc.

{Et [8] sic nota un bref de wast fut abatu par joynt feffement de la femme celui vers qi etc., la quele femme ne deit pas conprir [9] le tort son baroun etc.}

8B. GRAVESEND *v.* CHAUMBRE.[10]

Un A. porta son bref de wast vers un tenant a terme de vie.

Hedon. Richard frere mesme cesti A. lessa lez tenementz a nous et a nostre feme joyntement, et ele nent nomé en le bref. Jugement.

Cant. Nous volom averer q'il fust soul tenant le jour du bref purchacé. Prest etc.

Hedon. Nous avoms mis avant le fet R. vostre frere, qi heir etc. que tesmoigne le lees joynt. Jugement, si a nul averement encountre ceo devez atteyndre, sanz ceo que vous ne responet al fet.

Denom. Nostre bref est a recoverir franktenement, scil. le leu wast, et statut voet la ou home met avant chartre de joynt feffement que le demandant seyt r[ece]u al averement q'il fut soul tenaunt le jour du bref purchacé. Jugement, si l'averement ne seyt resceyvable.

Hunt. Nous mettom avant le fet vostre auncestre, a quay il vous covent respoundre.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 136d, Essex.

Simon de la Chaumbre de Totham in mercy for divers defaults.

The same Simon was summoned to answer Stephen de la Graveshende of a plea why (whereas by the common council of the King's kingdom it is provided that it be not lawful for anyone to make waste, sale or destruction of the lands, houses, woods or gardens demised to him for term of life or of years) the said Simon made waste and sale of the houses and woods in

[1] *Ins.* par statut *M*, *P*. [2] est *M*, *P*. [3] homme *M*, *P*. [4] par le *T*. [5] put estre partie a dedire ou a granter *M*; *sim. P*. [6] le fait *T*. [7] *Ins.* maniere de *M*, *P*. [8] Note in the text of *M*, *P*. [9] acomprur (?) *T*. [10] Text from *L*.

Hedon. The averment that you tender was provided by a Statute which is to be understood as speaking of a case in which a stranger's deed is produced, and not of one in which [the demandant] is privy to the deed and can confess or deny it. But here you are privy to him whose deed we produce.

Stanton, J. looked at the Statute and said that it did not warrant such an averment in such a writ.

And as [the demandant] could not deny the deed, it was awarded that he took nothing by his writ.

{And[1] so note that a writ of waste was abated by the joint feoffment of the wife of the defendant,[2] for the wife ought not to suffer for the tort of her husband.}

8b. GRAVESEND *v.* CHAUMBRE.[3]

One A. brought his writ of waste against a tenant for life.

Hedon. Richard, the plaintiff's brother, leased the tenements to us and our wife jointly, and she is not named in the writ. Judgment.

Cambridge. We will aver that he was sole tenant on the day of writ purchased. Ready etc.

Hedon. We have produced the deed of your brother, whose heir [you are], and it testifies that the lease was joint. Judgment, whether against this you can get to any averment without answering to the deed.

Denom. Our writ is for the recovery of freehold, namely the place wasted, and the Statute wills that when a man produces a charter of joint feoffment, the demandant is to be received to the averment of sole tenancy on the day of writ purchased. Judgment, whether the averment be not receivable.

Huntingdon. We produce the deed of your ancestor, and to this you ought to answer.[4]

Note from the Record (*continued*).

Parva Totham[5] which Richard de Graveshende, brother of Stephen, whose heir he [Stephen] is, demised to him [Simon] for the term of Simon's life, to the disherison of Stephen and against the form of the provision aforesaid. Stephen, by his attorney, says that, whereas Richard his brother, whose heir he is, had demised to Simon a messuage, one hundred acres of land,

[1] This note is not in all our books.

[2] That is, by the fact that his wife was jointly enfeoffed with him.

[3] From a single manuscript.

[4] This report carries the discussion no further.

[5] Mod. Little Totham.

Note from the Record (*continued*).

five acres of wood and five acres of meadow in the vill of Parva Totham, to hold for the life of Simon, Simon made waste and sale etc., to wit, by pulling down a hall, price ten marks, a chapel, price forty shillings, a barn, price sixty shillings, a kitchen, price twenty shillings, to the disherison etc., against the form of the provision etc. : damages, forty pounds.

Simon, by his attorney, comes and says that he ought not to answer him to this writ; for he says that he holds the tenements jointly with one Anne

9. PYPARD *v.* CLERK.[1]

Entré, ou piert qe tut eit un de joint tenaunts abatu le bref par joint tenaunce, l'altre abatra le bref purceo q'il n'est pas vile einz hamele.

Entré, ou dit fut qe ceo fut hamele et noun pas vile.

Un homme porta soun bref d'entré foundu sur la novele diseisine vers ij. nometz en le bref par un *precipe*, et demaunda certeynz tenemenz en B.

Lauf. C'est un bref mixt en le dreit ou il covendra qe sa demaunde fust en ville. Nous vous dioms qe B. n'est pas ville einz une hamele[2] dedenz Overtavelot.[3] Jugement du bref.

Herle. Vous ne devetz nostre bref abatre par taunt, qar einz ces houres si portames autiel bref de mesme les tenemenz en mesme la ville vers Johan soul, q'est ore un de eaux nometz en le bref, ou il vient en court et dit q'il n'avoit riens en les tenemenz si noun joint ove W., qi est ore auxint nomé; par qei nostre bref si[4] abati; et demaundoms jugement, desicome nostre bref se abati adeprimes par ly mesmes,[5] qe nous dona le bref qe nous ore usum. Et demaundoms jugement etc.

Lauf. W. ne vient en court avaunt ore, issint qe quele choce qe J. eit fait ne luy deit torner en prejudice de soun estat. Et d'aultrepart, tot eust J. eu la vewe en le primer bref, unqore avereit W. la vewe etc.

Hedon ad idem. Si diverse precipes fussent portés de mesme les tenemenz en Ouertaverlet,[6] le bref dirreit en trestoutz les precipes, estre[7] le premir precipe, 'in eadem villa'; et ceo ne purreit estre saunt ceo qe la demaunde fust en ville.

[1] Text from *A*: compared with *M*, *P*, *T*, *X*. Headnotes from *A* and *P*. [2] hamelet *M*. [3] *Om.* dedenz Overtavelot *A*, *D*; *ins.* *M*; *sim.* *T*; dedeinz nostre Warderobe *P*. [4] se *D*. [5] par la partie *M*, *P*. [6] nostre Warderobe *P*. [7] estre entre *T*.

Note from the Record (*continued*).

his wife, not named in the writ, without whom [he cannot answer]; and he prays judgment of the writ. And he produces a charter under the name of Richard sometime Bishop of London,[1] which witnesses that the Bishop gave the manor of Parva Totham to Simon and Anne.

And Stephen cannot deny this. Therefore let Simon go thence without day, and Stephen take nothing by his writ, but be in mercy for his false claim.

9. PYPARD *v.* CLERK.[2]

Qu. whether in a writ of entry *sur* disseisin it is necessary to name a vill, or whether the name of a hamlet will suffice. When a writ against *A.* for land in *X.* has been abated by a plea of joint tenancy by *A.* and *B.*, *qu.* whether to another writ for the same land against *A.* and *B.* the objection that *X.* is not a vill can be taken.

A man brought his writ of entry founded upon the novel disseisin against two, [J. and W.], named in the writ by a single *praecipe*, and demanded certain tenements in [Over Caldecote].

Laufer. This is a writ in which the right [and possession are] mixed; and so it behoves that a certain vill be named. And we tell you that [Over Caldecote] is not a vill, but is a hamlet within [North Ivel].[3]

Herle. That is not enough to abate our writ; for before now we brought a similar writ for the same tenements against John, who is one of those named in the writ; and he appeared and said that he had nothing in the tenements save jointly with W., who now is also named, and so our writ abated. We pray judgment whether our writ be not good enough, since he [J.] abated our first writ and himself gave us our present writ.

Laufer. But W. has not been in court until now, so nothing that J. has done should turn to the prejudice of his estate. Moreover, if J. had had a view in the first writ, still W. would have one now.

Hedon to the same effect. If divers *praecipes* were brought for these tenements in [Over Caldecote], the writ would say in each *praecipe*, except the first, 'in the same vill,' and that could not be so unless the demand were for land in some vill.

[1] Richard of Gravesend, who died in 1303.

[2] Proper names from the record.

[3] One book says 'within our wardrobe,' both here and below.

West. Ja ne ussez abatu une asise[1] ne bref de dower par taunt.

Herle. Le r[espouns] qe serroit doné pur lui et pur l'autre,[2] et del houre qe vous ne poetz dedire[3] et vous avetz conu a meynz B. estre hamelette etc.,[4] demaundoms jugement etc.

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 38, Bed.

Robert Pypard demands against Henry le Clerk and Joan his wife one acre of land in Oure Caldecote, and against Agnes, wife that was of William le Bonde, one acre of land and two parts of a messuage in the same vill, into which Henry and the others have no entry save after the demise which Robert made thereof while he was under age to Alexander de Lacheford.

Henry and the others, by the attorney of Joan, say that they ought not to answer him thereof to this writ; for they say that whereas Robert demands against them the said tenements in Oure Caldecote, supposing

10A. GAUNT *v.* GAUNT.[5]

Cui in vita: le tenaunt vocha a garraunt iij., un denz age, et la paroule demura tauntqe a soun age: ou piert qe tut vouche il de fee simple, il gar[auntira] par fait a terme de vie.

Cui in vita, ou le tenant vocha a garaunt trois parceners, et l'un fut deinz age: par qei fut agardé qe la femme recovereyt vers le tenant et qe le tenant attendreit de la garauntie tanqe al age etc.

Une femme porta soun *cui in vita* vers celuy qe fust entré par soun baroun, et counta de sa seisine demene.[6] Le tenaunt vowcha a garraunt iij. parceneres com un heir le baroun.[7] Une de eaux fust dedenz age. Par qei la femme recovery sa demaunde; et fust le vowcher symple.[8] La femme morust avaunt le age celuy vouché qe fust dedenz age, et issint les tenemenz qe la femme recovery descendy[9] as parceneres vouchez. Qaunt il furent[10] d'age, le tenaunt qi perdi[11] siwit de faire les venir en court. Et vindrent.[12] Et demaundé fust qei il[13] avoit de eaux lier a la garrauntie.

[1] *Ins.* de novel diseisine *M, P.* [2] Le r[espons] qest done pur un serreit pur lun et lautre *M*; *sim. P.* [3] *Ins.* ut supra *M, P.* [4] *Ins.* et *A.* [5] Text from *A*: compared with *D, L, M, P, T, X.* Headnotes from *A* and *P.* [6] *Ins.* com de fee et de dreit *L, M, P.* [7] *Om.* le baroun *M, P.* [8] *Ins.* en say *M*; en sey *L, P.* [9] descendirent *M.* [10] Qaunt le vouche fut *M, P*; *sim. L*; il fut *T.* [11] qi pur luy *P.* [12] *Ins.* termino Pasche *L, M, P.* [13] le voucheour *M*; le voch' *P.*

Westcote. But you would not have abated an assize of novel disseisin or a writ of dower for so little.

Herle. The answer that is being given by W. must be taken as the answer of both W. and J.; and, since you cannot deny what we have said, and you have admitted that the place is at least a hamlet, we pray judgment.

Note from the Record (*continued*).

Oure Caldecote to be a vill, Oure Caldecote is no vill or borough, but rather a hamlet of the vill of Northyeuele [1]; and thereof they demand judgment.

Robert says that his writ ought not be quashed by this; for he says that Oure Caldecote is a vill by itself and is commonly known for a vill in the country; and he demands that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the morrow of St. John Baptist.

The identification of the recorded with the reported case seems correct, though it will be noticed that the one is a *dum fuit infra aetatem*, while the other is entry sur disseisin.

10A. GAUNT *v.* GAUNT.[2]

When a tenant for life vouches, *qu.* whether the vouchee can refuse to warrant on the ground that the voucher was 'simple,' *i.e.* did not mention that there was only a life estate to be warranted. *Held* that such a voucher was at all events not a fatal error in a case in which the demandant had recovered owing to the vouchee's infancy, and the warranted land had come to the vouchee after the demandant's death.

A woman brought her *cui in vita* against one who had entry by her husband, and she counted on her own seisin. The tenant vouched to warranty three parceners as the one heir of the husband. One of them was under age. Therefore the woman recovered her demand. The voucher was simple.[3] The woman died before the infant vouchee attained full age, and so the tenements which the woman recovered descended to the parceners who were vouched.[4] When [the infant] attained full age, the tenant, who had lost, sued to cause the vouchees to come into court. They came and demanded what the tenant had to bind them to warranty.

[1] Mod. Northill, representing North Ivel, on the Ivel River. Over and Lower Caldecote exist.

[2] This case is Fitz. *Voucher*, 210. Proper names from the record.

[3] That is, it did not say that there was only a life estate to be warranted.

[4] It seems to be supposed that the vouchees were heirs of the demandant; but see our note from the record.

Malm. mist avaunt fait qe testmoigna qe l'auncestre les enfauntz[1] li lessa les tenemenz a terme de sa vie. Et de tiel estat vowcha.

Scrop. Vostre vowcher est symple, et ore botez vous avaunt un fait pur nous lier, qe testmoigne qe vous n'avetz qe terme de vie. Jugement, si par tiel fait,[2] qe n'est mye pursuaunt del[3] vowcher, devoms etc.[4]

Malb. Qaunt un homme vowche, ceo ne serroit[5] d'aultre riens fors de faire soun garraunt venir en court. Mès ore estes vous[6] venuz en court et avetz demaundé etc., et avoms mys avaunt le fait vostre auncestre. Jugement, si vous ne devetz r[espoundre] al fait.

Berr. Il voudra ambedeux les aver les oefs[7] et la maille, q'il[8] sount seisiz de la terre recovery et vodreint se devoluper[9] de la garrauntie. (Qe furent chacetz[10] a r[espoundre] al fait.[11])

Et il garr[auntirent] a derrein pur doute de amercyment etc.

{Mès[12] Scrop ne fut pas osé a demorrer taunt q'il fut ousté par agarde, pur ceo q'il entendi qe le jugement passereit encontre lui[13] et q'il serroit grevousement amercié, pur ceo qe la terre fut tenu par baronie etc. et par taunt le amerciment le plus haut. Et garr[auntit] al dreyn.}

{La[14] reson fut pur qei la femme recovery seisine de l'entere de sa demande, pur ceo qe[15] les treis parceners sount vouchés cum un heir, et celi q'est deinz age ne deit par ley garantir durant soun noun age, ne les ij. ne poent garantir saunz la terce, qe s'il feisent, ceo serreit a severer la garantie, qe ne put estre; e statut veult qe la femme ne soit pas delayé etc.; et la ley comune veult qe si un des heirs soit deinz age, tut soient les autres de age, qe la parole demure[16] tanqe al age etc.}

10B. GAUNT *v.* GAUNT.[17]

Mabille Gaunt porta son *cui in vita* vers Gilbert Gaunt. G. voucha a garrant Willem Malulé e Margerie sa femme, Juliane e Alice soers

[1] les en feff' et *T.* [2] estat *D.* [3] a vostre *M, P.* [4] r[espondre] *M, P*; respoundre *L.* [5] sert *L, P, T.* [6] ore est *L.* [7] aver oustes *A*; les oefs (?) *D*; les ofers (?) *T.* [8] Ber. Il vodra volunters avoir la gelyne et la mayle qar il *M, P*; il voleyent volunters avoir le oefs et le mayle *L.* [9] voudreient estre desvolupe *M, P.* [10] Et lour chasa *M, P*; *sim. L.* [11] *Ins.* non obstante diversitate inter factum per quod etc. voc' *M, P* (*and end report*); inter factum et advocacionem ad warrantum *L.* [12] This note in the text, *M, P, L*; *om. A, D, T.* [13] *Om.* the residue *L.* [14] This note from the margin of *P.* [15] *Om.* qe *P.* [16] demura *P.* [17] This version from *Y* (f. 91).

Malberthorpe produced a charter which witnessed that the ancestor of the [vouchees] leased the tenements to him for his life. And for that estate he vouched.

Scrope. Your voucher [was] simple; and now to bind us you produce a deed which witnesses that you have nothing but for term of life. Judgment, whether we ought to answer to a deed which is not in pursuance of the voucher.

Malberthorpe. When a man vouches, the voucher [serves] no purpose but that of bringing his warrantor into court. And now you have come into court, and have asked [what we have to bind you to the warranty;] and we have produced the deed of your ancestor. Judgment, whether you ought not to answer to the deed.

Bereford, C.J. They would like to have the eggs[1] and the ha'penny as well. The vouchees are seised of the land that was recovered, and yet they desire to disengage themselves from the warranty.

So they were driven to answer to the deed, and at length they warranted for fear of an amercement.

{*Scrope*[2] did not dare to demur until he should be ousted by a judgment of the Court; for he understood that the judgment would pass against him and that he would be grievously amerced, for the land was held by barony, and for that reason the amercement would be all the higher.[3] So in the end he warranted.}

{The[4] reason why the demandant recovered seisin of the whole of her demand was this: the three parceners were vouched as one heir; and the one who was an infant was not bound to warrant while under age; nor could two of them warrant without the third, for that would be to sever the warranty, which cannot be done; and the Statute[5] says the woman is not to be delayed; and the common law is that if one of the heirs be under age, the parole must demur until his full age, albeit the others are of age.}

10b. GAUNT *v.* GAUNT.[6]

Mabilia Gaunt brought her *cui in vita* against Gilbert Gaunt. Gilbert vouched to warranty William de Maulay and Margery his

[1] Or 'the chicken.' This proverbial saying has been corrupted in some of the books.

[2] This explanation is not in all the books.

[3] It would be affeered by Barons of the Exchequer.

[4] This note stands in the margin of one of our books.

[5] Stat. Westm. II. c. 40.

[6] From a single, but good, manuscript. For the proper names, see the record. Those given in the report are not correct.

cele Margerie, filles e heirs Johan de Gaunt qe sunt de deinz age, par ceo fet ; e mist avant fet. Par quoi agardé fust qe Mabille rescoverast sa seisine, e q'il demurast tanke al age par statut. Et après q'il furent de plein age, G. suyt une resumonce a somondre W. Malulé e Margerie sa femme, Juliane e Alice avantdites. Les queux viendrent e demanderont par quoi etc. E mistront avant le dit fet qe voleit qe Johan Gaunt granta ceux tenemenz a G. Gaunt a terme de sa vie.

Scrope. Il nous ad vouché simplement, e le fet q'il mette avant de nous lier ne voet qe terme de vie. Jugement, qar en chescon garrant voucher le tenant deit moustrer a la court l'estat q'il cleime en les tenementz ; e s'il vouchast de autre estat celui qe le vouch[e] [1] se puet desafubler etc. E demandoms jugement.

Hedon. Nous vous avom vouché par le fet vostre auncestre, le quel ne chiet mie en vostre desheritance, mès un profit a terme de nostre vie, des queux tenemenz vous estes hui ceo jour seisi par la mort Mabille nostre [2] mere. E demandoms jugement si vous ne devez garrantir.

Hervi. Alez a la bone foy ! N'estes vous meisme hui ceo jour seisi ?

Scrop. Il nous covent servir a noz clyens par lei de terre. E lei de terre ne voet mie qe homme qe vouche simplement sanz moustrer sun estat a la court sur sun voucher q'il soit garranti par la vertue de un fet qe voet terme de vie. E demandoms jugement.

Bereford. Reson voet qe vous lui garantisez, e lei si est fondu sur reson, e bone fey voet del hour qe vous hui ceo jour estes seisi des tenemenz.

Scrop. Si vous agardez, nous le voloms.

Bereford. Ou est l'atturné ?

Sire, veez le cy.

Beal ami, volez garrantir ?

L'Attorné. Si vous agardez.

Bereford. Si nous devoms fere [3] sur [4] ceo agard, par la fey qe jeo vous dey vous gar[rantirez] ove la sause !

Scrope. Sire, ceo est une excepcion qe chiet en voz descrescions e ne est pas en cas ou fet est dedit etc.

Et in fine Scrope war[antizavit] et concessit facere ad valenciam etc.

[1] *Corr.* estat, le vouché. [2] *Corr.* vostre. [3] *substituted for* gar' *Y.* [4] su *Y.*

wife, and Juliana and Alice, sisters of Margery, daughters of John of Gaunt, who are within age, by a deed, which he produced. Therefore it was awarded that Mabilia recover her seisin, and that he should await the full age [of the vouchees] according to Statute.[1] When they were of full age Gilbert sued a resummons of W. [Maulay] and Margery his wife, Juliana and Alice. They came and demanded wherefore [they should warrant]. [Gilbert] produced the said deed, which said that John Gaunt granted the tenements to Gilbert for the term of his life.

Scrope. He has vouched us simply, and the deed that he produces to bind us only witnesses an estate for life. We demand judgment, for in every voucher the tenant ought to show to the court the estate that he claims in the tenements; and if he vouched for a different estate, the vouchee might disengage himself.

Hedon. We have vouched you by the deed of your ancestor, which does not make for your disherison, but (and thus you profit) gives us only a term for life;[2] and of the tenements you are this day seised by the death of Mabilia your[3] mother. We pray judgment whether you ought not to warrant us.

Stanton, J. You should proceed in good faith. Are not you yourselves this day seised?

Scrope. We must serve our clients according to the law of the land. And the law of the land will not suffer that a man who vouches simply, without showing his estate, shall be warranted by virtue of a deed which gives [merely] a life estate. Judgment.

Bereford, C.J. Reason requires that you warrant him, and the law is founded on reason, and good faith demands it since you yourselves are this day seised of the tenements.

Scrope. If that is your decision, so be it.

Bereford, C. J. Where is the attorney?

[*Attorney.*] I am here, Sir.

[Bereford, C.J.] Fair friend, will you warrant?

Attorney. If you so decide.

Bereford, C.J. If you let it come to a decision, by the faith that I owe you, you will have to warrant with the sauce!

Scrope. Sir, this is a plea that lies in your discretion, and it is not as though we had denied the deed.

In the end *Scrope* warranted and conceded that they would give the recompense.

[1] Stat. Westm. II. c. 40. [2] We try to give the sense of a very short phrase. [3] But the text has 'our.'

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 169, York.

Lora, wife that was of Gilbert de Gaunt, aforetime, to wit, on the morrow of St. Martin in 27 Edw. I. [A.D. 1298] at York before J. de Metingham and his fellows, justices etc., demanded against Adam de Gaunt four messuages, nine tofts, and thirty bovates of land in Hundmanby which she claimed to hold for life by the gift of John of Wauton, and into which Adam had no entry, save by (*per*) Gilbert sometime her husband, who demised them to him, and whom she in his lifetime could not contradict.

And Adam, by his attorney, then came and thereof vouched to warrant Juliana de Gaunt, Roger de Kerdeston and Peter son of Peter de Malo Lacu, heirs of Gilbert de Gaunt. And the said Peter was then under age and demanded that this parole should demur (*loquela ista remaneret*) until his age.

Lora said that by the minority of Peter one of the heirs etc. she ought not to be delayed from obtaining her seisin of the tenements; for she said that in the statute of the then King last published at Westminster it is contained [1] that when one alienates the right of his wife, the wife after her husband's death shall not be delayed from her seisin by the minority of the heir of her said husband, but let the buyer, who ought not to be ignorant that he bought the right of another, await his recompense in value until the age of the warrantor; and she said that the tenements were alienated after the statute.

And Adam could not deny this. Therefore it was then awarded that Lora recover her seisin against Adam, and that he await the age etc. for his recompense etc.

And now, to wit, on three weeks from Easter [3 Edw. II.], come as well Adam in his proper person as the said Juliana, by Dominic de Bucton her

11. STARLEY *v.* THRELKELD.[2]

Replegiari, ou estraunge serra mye receu d'abatre m'avowerie en forme; et tut conise il soun estat si noun terme d'aunz, il avera mye eyde einz q'il eit pledé: et receu d'averer les tenemenz estre hors de soun fee.

Un Henri fust attaché a respoundre a un A. en un plee de prise des averes. Le quel avowa pur ly et conust pur [3] ses parceneres, par la resoun q'un R. tient de eaux certeynz tenemenz par homage etc. et par un livre [4] de peyvre [5] etc. et par siwte de lour molyn de B. et a moudre toutz ses bleez cressauntz en les tenemenz etc. al xiiij.[6] vesel

[1] Stat. Westm. II. c. 40. [2] Text from *A*: compared with *D*, *L*, *M*, *P*, *T*, and *Y* (f. 170d), which diverges considerably. [3] *Ins.* Johan et Alice *M*, *P*, *L*. [4] livree *L*. [5] peyffre *M*. [6] tressime *L*.

Note from the Record (*continued*).

attorney, and Roger and Peter, by Elias de Swaldale their attorney, by resummons. And Juliana and the others demand that Adam show whether he has any specialty (*speciale factum*) whereby they ought to warrant him. And he produces a 'part' of an indented writing, made between Gilbert de Gaunt brother of Juliana and uncle of Roger and Peter, whose heirs they are, and Adam, which witnesses that Gilbert gave and granted and by his charter confirmed to Adam his brother all that land with its appurtenances in Hunemanby and Folethorp which he [Gilbert] aforetime bought of John de Wauton, as he bought it, to have and to hold of himself and his heirs, for the whole life of Adam etc., and he bound himself and his heirs to warrant in form aforesaid, and that after Adam's death the land should revert to him [Gilbert] and his heirs; and he [Adam] says that the said tenements are contained in the said writing; and for this reason they [Gilbert's heirs] are bound to warrant the tenements to him.

And Juliana and the others fully confess the said writing to be the deed of Gilbert de Gaunt, their ancestor etc.; and in form aforesaid they warrant, and they grant that Adam have of the land of them, Juliana, Roger and Peter to the value etc. Therefore let him have a writ etc.

This seems to be the reported case, but the reporters seem to err when they suppose that the vouchees were heirs of the demandant, for (see our vol. i. pp. 1–4) Gilbert of Gaunt and Lora his wife left no heirs of their bodies, so that Gilbert's heirs (a sister and two nephews) could not be Lora's heirs, unless indeed Gilbert had married a cousin. The record, it will be seen, does not suggest that the vouchees are Lora's heirs or that they are seised of the warranted tenements. On the other hand, neither of our reports tells us that the demandant had only claimed to hold for her life.

11. STARLEY *v.* THRELKELD.[1]

Replevin by *A.* against *X.* Avowry upon *M.* *A.* prays aid of *M.* on the ground that *A.* holds for years of *M.* Aid is refused; but *A.* is admitted to plead 'outside his fee.' Can there be an avowry for suit to a mill?

One Henry was attached to answer one A. in an action for beasts taken. Henry avowed for himself and made cognisance for his parceners, for the reason that one Richard held of them certain tenements by homage etc., and a pound of pepper etc., and by suit to their mill at B. to grind there all the corn growing on the tenements etc., paying at the rate of one measure in fourteen[2]; of

[1] This case is Fitz. *Ayde*, 161. Proper names from the record.
[2] Or 'thirteen.'

etc., et dount un tiel fust seisi etc., et pur le homage etc., si avowe il etc. sur [1] l'autre,[2] et nyent sur A. etc. qe se pleynt.

{Un [3] A. se pleint qe B. prist ses avers atort. B. avowe la prise pur lui e conust pur ses parceners C. e D. sur un F. com sur lour verrai tenant, par la reson q'il tient de eux un mies e ij. bovez de terre ove les appurtenances en N. dount le lieu ou la prise fut fete etc., par homage e fealté e par les service de une livre de comin par an e par suite a lour molin de mesme la ville de bleez cressanz etc. a xiij. vesseal moudre. E pur ceo qe le homage est arere, il avowe la prise de un boef e conust etc. E pur la fealté l'autre. E pur ceo qe la rente de la livre de comin fut arrere par v. anz devant le jour de la prise, issi avowe il pur lui e conust pur ses parceners la prise del quart boef.}

Denom.[4] En chescun etc.[5] si covent faire mencioun de toutz [6] services qe cheient en avowrie. Mès ore avowe il etc.[7] purceo qe Richard tient d'els etc. par siwte a lour molyn, la quel siwte n'est mye proprement service einz est servage,[8] a quel siwte recoverir bref est ordyné.[9] Jugement, si de ceste avowrie etc.[10]

Herle. La siwte de molyn n'est pas en demaunde; et, tot fust ele, vous estes estraunge, et mesq'ele fust en demaunde, l'avowrie serroyt meyntenue,[11] qar plusours sount [12] feffez a tenir de lour seignours par siwte a lour molyns.[13]

Denom.[14] Nous n'avoms rien sy noun a la volunté Richard, et prioms eyde de luy.

Berr. Coment a la volunté Richard? [15]

Denom. Il tient a terme de x. aunz du lees Richard etc.[16]

Berr.[17] luy ousta de l'eyde.[18]

Denom.[19] La destresce fait hors de soun fee. Prest etc.

Herle. A ceo ne devetz avenir, qar vous avetz conu vostre estat estre si feble qe vous ne poetz estre partie a trier le quel ceo soit en nostre [20] fee ou noun. (Hoc non obstante l'averement fust receu.)

[1] endreit *M.* [2] des autres et sur Richard *M*; avowe il pur ly et conust en dreit de la partie des services et pur la rente arere v. aunz scil. chescun an un li. etc. en dreit des autres et sur Richard *P*, *T*. [3] This version from *Y*. [4] J. Denom. *M*. [5] avowerie *M*, *P*. [6] ceux *P*. [7] *Ins.* et conust etc. *L*. [8] aprwement de cervage *L*. [9] *Ins.* scil. quod faciat sectam ad molendinum *M*, *P*; *sim. L*. [10] *Om.* etc. *A*. [11] demande nous saveroms unqore meintenir mult bien nostre avowerie *M*, *P*; *sim. L*. [12] dount *A*. [13] et vous truverez en plusours lieus en Engleterre qe feffementz sunt fetz pur suite de molyn. Hervi a J. Denham. R[esponez] *Y*. [14] J. Denham *M*. [15] Herle. Coment a la volente F., qar sa volente est chaungeable *Y*. [16] et pria eide ut supra *M*. [17] Cler. *M*, *P*. [18] *Ins.* et hoc idem accidit termino S. Mich. anno tercio *M*, *P*; *sim. L*. [19] J. Denom *M*. [20] vostre *M*.

which services one so-and-so was seised; and for homage etc. he avows for himself [and makes cognisance for the others] upon Richard and not upon the plaintiff.[1]

{One[2] A. complains that B. wrongfully took his beasts. B. avows the taking for himself and makes cognisance for his parceners C. and D. upon one F. as upon their very tenant, for the reason that [F.] holds of them a messuage and two bovates of land with the appurtenances in N., whereof the *locus in quo* [is parcel], by homage and fealty and by the service of a pound of cumin every year, and by suit to their mill in the same vill, to grind corn growing etc., for the thirteenth measure; and for that homage was arrear, he avows the taking of one ox, and makes cognisance etc.; and for the fealty, another ox; and because the rent of the pound of cumin was arrear for five years before the day of the taking, he avows for himself and makes cognisance for the others of the taking of the fourth ox.}

J. Denom. In every avowry mention should be made of all the services that fall within the avowry. Here, however, he avows for that Richard holds of them etc., and by suit to their mill, which suit is not properly a service, but is a servitude,[3] for the recovery of which a special writ is ordained: [namely, *quod faciat sectam ad molendinum*].

Herle. The suit to the mill is not in demand; and, even if it were, you are a stranger, and even if [you were a privy] we could well enough maintain our avowry, for there are many people enfeoffed to hold of their lords by suit to their lords' mills.[4]

J. Denom. We have nothing save at the will of Richard, and of him we pray aid.

Bereford, C.J. How at Richard's will?[5]

Denom. We hold for a term of ten years by Richard's lease etc.

Bereford, C.J., ousted him from the aid.[6]

Denom. The distress was made outside their fee. Ready etc.

Herle. To that you cannot get, for you have confessed your estate to be so feeble that you cannot be received to try whether the distress were within our fee or not. (None the less, the averment was received.)

[1] The wording of this clause is not very plain in the books. Apparently the distraint was for rent as well as homage.

[2] This fuller statement from a single manuscript.

[3] Perhaps 'a servitude' in the Roman sense; but our books seem to speak of 'serfage.'

[4] In one of our books Stanton, J., here tells J. Denom to answer.

[5] Or '*Herle.* How at his will, for his will is changeable?'

[6] Some add that the same happened in Mich. 3 Edward II. See our vol. ii. p. 92.

{*Hervy.*[1] Le plus estrange du mounde puet estre partie a tiel averment.[2]}

Malb. Nous ne poums estre partie sauntz nostre parcenere[3] et prioms eide de luy.[4] (Et habuit[5] etc.)

{E[6] en tel cas la destresce put estre avowé. Mès, tut tigne il de moi par serviz de rente et noun pas de fere sute a moun molyn, einz par cas eit fet et fere deyve la sute a moun molyn par custume, dount covent, s'il sustret la sute, qe jeo soie a ma actioun vers li com vers un altre.}

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 241d, Westm.

Henry de Threlkeld was summoned to answer Simon de Starley of a plea wherefore he took Simon's beasts and detained them against gage and pledge. Simon, by Richard de Moreland his attorney, says that on [26 Sept. 1309] Friday next before Michaelmas, in 3 Edw. II., in the vill of Crosseby Ravenswart,[7] in a place called Starleyflat, Henry took six oxen of Simon's and wrongfully detained them against gage etc., until etc.: damages, a hundred shillings.

The same Henry was summoned to answer Adam Scot of a plea wherefore he took Adam's beasts and detained them against gage and pledge. Adam, by his attorney, complains that on the same day and year, in the said vill and place, Henry took six oxen of Adam's and wrongfully detained them against gage etc., until etc.: damages, a hundred shillings.

Henry, by his attorney, after formal defence, avows the takings; for he says that Richard, son of Gilbert Fraunceys, holds of him and William, son of William de Goldington, and Emma wife that was of Gilbert de Querton, three messuages and forty acres of land in Crosseby Ravenswart by homage, fealty, and the service of one pound of cumin and of doing suit to Henry's mill in the said vill for (*de*) all manner of corn growing on the said tenements, to be ground there at the rate of (*usque*) the thirteenth vessel; and

12. DRAYTON *v.* ROTHENHALE.[8]

Quare impedit ou il fust receu d'averer qe soun auncestre ly avoit enfeffé de terre et de l'avowesoun long temps avaunt la fyn mesme cely auncestre qe se leva sour doun. Respice quia bonum.

Quare impedit ou l'eyre voida la fyne levé par le pere de certeyn tenemenz cum advocacione, quia prius dedit alia tenementa cum eadem advocacione eidem heredi.

[1] *From Y.* [2] End of case, *Y.* [3] noz parceners *M.* [4] eux *M.* [5] *Ins.* auxilium *M.* [6] From the margin of *P.* [7] Mod. Crosby Ravensworth. [8] *Vulg.* p. 68. Text from *A*: compared with *B*, *D*, *L*, *M*, *P*, *T*, *X*. Headnotes from *A*, *S*, and *B*.

{Stanton, J. The merest stranger in the world can be party to that averment.}

Malberthorpe. Then we cannot be a party without our parcener, and of him we pray aid.

Aid granted.

{And [1] in that case the distress can be avowed. But if one holds of me by rent service and not by the service of suit to my mill, but perchance he owes such suit by custom, then, if he withdraws his suit, I am put to my action against him as I should be against another [who was not my tenant].}

Note from the Record (*continued*).

of this homage, fealty, and service one Thomas de Hastingges, grandfather of Emma and great-grandfather of Henry and William, whose heirs they are, was seised by the hand of Gilbert, father of Richard, whose heir he is; and because the homage of Richard was arrear to Henry, William and Emma on the day of the takings, he avows the taking of six oxen in his own name and for his said parceners, and for Richard's fealty he avows the taking of one ox, and also because the said rent was arrear to them for five years before the taking, he took five oxen among (*de*) the said beasts, in the fee of them, Henry, William, and Emma, as well he might.

Simon and Adam say that Henry cannot avow the takings as lawful in this behalf; for they say that Henry took them not in his fee, but outside his fee, and they pray that this be inquired by the country.

And Henry cannot abide this averment without William and Emma, his parceners. Therefore be they summoned to be here three weeks from Michaelmas to answer etc.

At that day come Adam and Simon by their attorney, and likewise Henry; but William son of William and Emma come not, nor has the sheriff sent the writ. Therefore, as before, be they summoned to be here on the morrow of the Purification; and the same day is given to the parties.

12. DRAYTON *v.* ROTHENHALE.[2]

Seisin of an advowson cannot be transferred by a fine. *A.*, who made the last presentation to a church, enfeoffed his son *B.* of Whiteacre together with the advowson. He then enfeoffed *X.* of Blackacre together with the same advowson, and made conusance of these tenements to *X.* by fine with warranty. The church falls vacant; *A.* is dead; *C.*, who is heir of *B.* and *A.*, is seised of Whiteacre.

[1] This stands in one of our books as a note on Herle's first speech.

[2] Proper names from the record.

Quare impedit ou l'auncestre le defendaunt avoit graunté al auncestre le demaundaunt la moité del awouesoun par fyn ; et le defendaunt qe soun auncestre demene ly avoit graunté la moité del awouesoun par fet en pais long temps avaunt la fyn levé, prest etc.

Richard de Eytone[1] porta soun *quare impedit* vers Piers le fitz Sewalf de Ridenhale,[2] et counta q'a tort luy destorba a presenter etc. a[3] la eglise de T. par la resoun q'un T.[4] de Ridenhale fust seisi d'un mies etc. a qei l'avowesoun de la moyté de la eglise est appendaunt, qi[5] presenta un soun clerk etc. par qi mort la eglise est ore voide. Le quel T. hors de sa seisine enfeffa un Roggier[6] nostre piere, qi heir etc. Le quel Roggier porta soun bref de garrauntie de chartre le terme etc. l'an xij.[7] etc. devaunt etc., ou l'avaunt dit T. vient en court et conist[8] le mies etc. ensemblement ove l'avowesoun de la moyté avauntdit[9] estre le dreit Roggier, come ceo qe R. avoyt de soun doun, et T. et ses heirs garr[auntireient] a R. et a ses heirs a toutz jours. De Roggier descendy a Richard q'ore demaunde, et issint appent etc.[10]

Inge.[11] A nous appent etc. qar Thomas de R., de qi etc., tiel jour etc. avaunt la fyn[12] etc. nous enfeffa de ij. acres de terre et de xij.[13] s. et viij. d. de rente[14] ensemblement ove l'avowesoun de la moyté[15] de la eglise avauntdit, par quel feffement nous seisiz de la terre et de la rente avauntditz. Et demaundoms jugement, depus qe Thomas nous dona l'avowesoun avaunt le temps de la[16] conisaunce, si vous pusset rien clamer. (Et mist avaunt chartre[17] en evidence.)[18]

Herle. Al averement ne devetz avenir, qar conisaunce fait en court qe porte record si com fins et en aultre maners[19] ne pount estre voidetz[20] par ceaux qe sount a ceo partie ne par lour heirs.[21] Et vous dioms que T. de R., de[22] qi conisaunce nous affermoms[23] ceo presentement[24] estre appendaunt, si fust ael Piers. Et de l'houre qe l'averement qe P. tend si est a defaire[25] la conisaunce fait par soun auncestre, qi heir il est, etc.

[1] Drettone *M*; Dertone *B*; Bertone *L*; Dreytone *P*; Bretone *T*. [2] Sewal de Redenhale *M*, *L*; Sewale de Radnhale *B*; Randenhalle *T*. [3] al moyte de *M*, *B*, *L*, *P*. [4] Thomas *Al. Cod.* [5] a la moyte *M*, *B*, *L*, *P*. [6] *Ins.* de Dreytone *M*; Derton *B*; Dretton *L*. [7] *Om.* xij *B*, *L*; xiij *P*. [8] conust *M*. [9] la moigte del avowesoun *B*. [10] a R. a presenter etc. *M*; *sim. B*, *L*, *P*. [11] Ingh. *B*; Ingham *L*; Hyngham *P*. [12] avaunt l'an xij. *M*, *B*, *L*, *P*. [13] xj *D*, *M*. [14] *Ins.* en F. et en E. en fee simple *M*. [15] *Om.* de la moyte *B*, *L*. [16] temps qil vous deust avoir fet tiel *M*; *sim. B*, *L*, *P*. [17] *Ins.* endente *B*, *L*. [18] Et posuit cartam etc. que donum suum testatur ad evidenciam *P*. [19] sicom par fyns levetz ou autrement *M*; *sim. P*, *B*. [20] *Ins.* et defetez et nomement *M*; *sim. B*, *L*, *P*. [21] parties a tiel conisaunce et ceo par Stat. Quia fines etc. *M*; *sim. B*, *L*, *P*. [22] par *M*, *B*, *P*. [23] vous affermetz *B*. [24] *Ins.* a nous *M*, *P*; a vous *B*. [25] est en defessaunt *M*, *P*; est en deffesaunt et anintisant *B*; et en anentissement *L*; si est evidence de *T*.

Semble that *C.* has better right than *X.* to present. In a *quare impedit* brought by *X.* or his heir, the fine and warranty do not estop *B.* from pleading the earlier feoffment.

Richard[1] of Drayton brought his *quare impedit* against Peter, son of Sewall of Rothenhale, and counted that wrongfully he disturbs him from presenting to [a moiety of][2] the church of [Pagefeld] for the reason that one Thomas was seised of a messuage etc. to which the advowson of a moiety of the church is appendant, and presented his clerk etc., upon whose death the church now is void; and the said Thomas out of his seisin enfeoffed one Roger[3] [the demandant's] father, whose heir [the demandant is]; and the said Roger brought his writ of warranty of charter in such a year and term before so-and-so, and Thomas came into court and made conusance that the messuage etc. together with the advowson of the moiety [of the church] was the right of Roger as that which he had by Thomas's gift, and that Thomas and his heirs would warrant to Roger and his heirs for ever; and from Roger the right descended to Richard, the now demandant, and so it belongs [to him to present].

Ingham. It belongs to us [to present], for Thomas, on whose [seisin you count], on such a day before the fine etc., enfeoffed us[4] of two acres of land and of twelve shillings and eight pence of rent,[5] together with the advowson of a moiety of the church, and by this feoffment we are are seised of the land and rent aforesaid. And since Thomas gave us the advowson before the time of the alleged conusance, we pray judgment whether you can claim anything. (And by way of evidence he produced a charter.)

Herle. To that averment you cannot get, for a conusance made by way of fine or otherwise in a court that bears record cannot be avoided by those who are parties to it, or by their heirs [and this by the statute *Quia fines etc.*[6]]. And we tell you that Thomas, by whose conusance we affirm this presentation to be ours, was grandfather of Peter [the impedient]. And we pray judgment, since the averment that he tenders goes to the defeasance of a conusance made by his ancestor, whose heir he is.

[1] Robert in the record.

[2] Throughout the reports there is some uncertainty as to whether more than a moiety of the church is in dispute.

[3] William in the record.

[4] The facts have been simplified. The feoffee was not the impedient, but his father Sewall.

[5] Some add 'in F. and E. in fee simple.'

[6] Stat. de finibus levatis, 27 Edw. I.

Berr. Dreit d'avowesoun de eglise nul jammès vestira en nul persone par conisaunce fait en court, si noun par presentement fait en temps de voidaunce etc. Mès ley[1] seffre qe homme porra auxi bien doner eglise et[2] avowesoun sauntz glebe[3] par fait hors de court come en court. Et depus qe T., de qi vous pernetz vostre estat, dona la terre et la rente ensemblement ove l'avowesoun avauntdit par sa chartre, qe ceo[4] testmoigne, avaunt le temps de la conisaunce, et ceo est la premiere voidaunce après,[5] dount il semble qe ceo doune qe est de eigné date deit estre de plus grant force[6] qe la fyn, qe se leva après[7] sur[8] uent.[9]

Pass. A dire qe la fyn se leva sur[10] nent[11] ne deit pas avenir, qe la fyn proeve la contraire,[12] en taunt come ele veot qe T. conust etc.[13] com ceo qe nostre auncestre[14] avoyt de soun doun.[15] Mès[16] si moun auncestre eust fait une conisaunce en court de certein tenemenz, jeo ne serra pas par statut receu a dire que celui auncestre etc. fut seisi[17] avant la conissaunce et après,[18] issint qe celuy a qi la conissaunce fust fait n'avoit nul estat par la conisaunce. Mès ore est soun r[espouns] qe Roggier n'avoyt rienz[19] par le doun q'est a luy fait, issint qe a Roggier par la[20] conisaunce[21] nul estat poet acrestre.[22] Et de tiel[23] r[espouns] est il ousté par statut.

Ing.[24] Statut toud[25] homme l'averement q'est a l'affirmatif et nient a la negatif en supposaunt qe T. fust seisi[26] avaunt et après sauntz chaunger soun estat. Mès a dire qe T. ne out riens le jour de la conisaunce ne fust il pas ousté.

Pass. Si moun auncestre eust conu par bref de garrauntie de chartre auxint com en le cas ou nous sumes ore, et mesme celuy[27] eust osté moun auncestre, ou eust entré après soun decès, cele conisaunce par le conisour[28] ne par moy qe syu[29] son heir[30] ne porra

[1] lui *M*; le *L*. [2] doner glebe ou [ove] avowesoun ou *B*; *sim. L*. [3] *Ins.* et *B, L*. [4] *Om.* ceo *A, L*; *ins.* le *M, P*. [5] *Ins.* ceo *M, P*; puis le doun *B, L*. [6] *Om.* deit . . . force *A, D*; *ins. M, P*. [7] *Rep.* apres se leva *A*. [8] *Ins.* un *M, L, P*. [9] et sur un vent *B*. [10] *Ins.* un *M, B, L*. [11] vent *B*; nient *D*. [12] covenant *M, P*. [13] T. etc. estre nostre dreit etc. *M*; *sim. L, P*; conust en nostre dreit *B*. [14] aunc' *A*. [15] *Ins.* Mes Thomas ne serreit mye receu en nul manere de voider la fin etc. et nent plus deit P. qest son heir de sang *M*; *sim. B, L, P*. [16] Et dautrepart *M, B, L, P*. [17] ne fuist mye seisi *B*. [18] *Om.* une conisaunce . . . apres *A*; *ins. M*; *sim. B, D, P, T*; *but* avaunt la fyn en le fyn ne pus la fyn *B*; *sim. L*. [19] qe T. n'avoit rien de Roger *M, P*; qe T. se avoit demys *L*. [20] sa *M, B, P*. [21] *Ins.* apres *M, P, L, P*. [22] estat ne purreit encrestre *M*. [23] *Ins.* maniere de *M, B, P*. [24] Hengh. *B*; Ingham *L*; Yngham *P*. [25] *Perhaps* tend *A*; tut, tout, toud *Al. Cod.* [26] qil fust ouste a dire qe T. fut seisi *M*; *sim. B, L, P*. [27] cas qore est entre nous et mesme celui a qi le dreit est conue *M*; *sim. B, P*; *sim. L* (qore est entremaynz). [28] par lui *M, B, L, P*. [29] *Om.* syu *A*; *ins. D*; su *L*. [30] *Om.* qe . . . heir *B, T*; *ins.* si sywy son bref *T*.

Bereford, C.J. The right of the advowson of a church shall never vest in anybody by a conusance made in court; it can only be vested by a presentation in time of vacation. But the law enables you to give glebe with advowson [1] or advowson without glebe by deed out of court as effectually as in court. And since Thomas, from whom you take your estate, gave the land and rent, together with the advowson, by his charter, which witnesses this, before the time of the conusance, and the present is the next subsequent vacation, it seems that the gift, which is of earlier date, should have greater force than the fine which was afterwards levied upon nothing.[2]

Passeley. He cannot get to say that the fine was levied upon nothing; for the fine proves the contrary, since it states that Thomas made conusance [that the land and advowson were the right] of our ancestor as those which he had of his [Thomas's] gift.[3] But if my ancestor has made a conusance in court of certain tenements, then by statute I am precluded from saying that this ancestor was seised before and after the conusance so that the conusee had no estate thereby. And here his answer is that Roger had nothing by the gift made to him, so that no estate can accrue to Roger by the conusance: and that is the answer which by statute he is debarred from giving.

Ingham. Statute takes from a man the affirmative averment, not the negative. It forbids him to plead that the conusor remained seised before and after the fine without change of estate. It does not debar him from pleading that the conusor had nothing in the tenements on the day of the fine.[4]

Passeley. If my ancestor had in a writ of *warantia cartae* made such conusance as was made in the present case, and the [hypothetical] conusee had ousted my ancestor or entered after his death, that conusance could never be avoided by my ancestor or by me, who am his heir, notwithstanding that the conusee entered by his own

[1] The text at this point is not perfectly plain.

[2] An alternative reading is 'upon wind,' and this is not an impossible phrase.

[3] Some books add, 'But Thomas could not in any wise be received to avoid the fine, and no more can Peter, who is his heir of blood.'

[4] We are compelled to expand a very succinct statement. The averment expressly mentioned in and prohibited by the Statute of 27 Edw. I. is an averment of continuous seisin before the fine and afterwards. In the recorded plea the allegation is that the *conusee* had nothing on the day of the fine.

jammès estre voidé, *non obstante* q'il entra par soun abatement demeine. A moult plus fort il ne porra [1] en ceo cas voider.

Berr. Nyent semblable,[2] qe le conisour par sa conisaunce ad affermé un [3] dreit en la persone celuy a qi le dreit est conu, issint qe quel hure [4] q'il pusse lez tenemenz happer de T.[5] en sa vie ou après [6] il est baré.[7] Mès n'est pas issint en ceo cas, qe Richard de D. ne poet mye happer [8] de T. en sa vie ne [9] après [10] ceo qe T. n'avoit pas en sa vie. Et d'altrepart, si vous me eusset feffé [11] hors de court de certeynz tenemenz et pus eusset tiele conisaunce faite [12] a un aultre de mesmes les [13] tenemenz, perderei jeo ma tenaunce par taunt (*quasi diceret non* [14]) ?

Pass. En vostre cas estat veste en vostre persone par continuaunce de seisine avaunt la conisaunce ; mès, tot fut issint q'il [15] luy ust doné,[16] nient plus ne vesti estat en sa persone del avowesoun q'en la nostre persone, qe c'est la [17] procheyne voidaunce. Et, del houre qe nous moustroms pur meyntenir nostre dreit un title si solempne [18] fait par soun auncestre, qi heir etc., n'entendomps mye qe a nul averement de pays encountre tiele title devetz estre receu. Et d'aultrepart, si nous fussoms enpledé de la terre qe soun auncestre nous dona,[19] il serroit par force de [20] conisaunce lié a la garrauntie. Ausint del avowesoun ; dount par mesme la r[esoun] defroms nous soun estat.

Berr. Coment [21] le lieretz vous [22] de choce dount vous n'estes pas [23] seisi ? [24] Et d'aultrepart, si vous fusset enpledé par bref de dreit d'avowesoun et li eusset vouché, il dirra [25] qe la eglise est [26] pleyne et conseillé par T., par [27] qi estat il clamereit come purchaçour etc., qar l'estat qe P. cleyme n'est mye come heir, eynz come purchaçour [28] etc.

Herle. Si T. eust doné a P.,[29] et puys ly ust diseisi de la terre et de la rente, et puis eust aliené [30] et obligé luy et ses heirs a la garrauntie, P. com heir serreit barré.[31] A moult plus fort en ceo cas.

Berr. Vous n'estes pas en ceo cas, qar P.[32] est huy ceo jour seisi

[1] plus tarde ne deit il *M* ; *sim. L* ; pluis tardif la deit il *P* ; *sim. T.* [2] Coment sembl' *B.* [3] son *M.* [4] *Om.* hure *A* ; *ins. Al. Cod.* [5] *Om.* de T. *M, B, L, P.* [6] *Ins.* son deces *M, B* ; *sim. L, P.* [7] *Om.* il est bare *B, L.* [8] *Ins.* terres *B.* [9] *Om.* en . . . ne *B.* [10] *Ins.* son deces *M, P* ; le deces *T, B.* [11] *Ins.* par le fet *M* ; par fet *B, L, P.* [12] *Ins.* ut supra *M, P.* [13] le *A.* [14] *Om.* quasi . . . non *B.* [15] tut deist [doyt *L*] P. verite qe T. *M* ; *sim. B, L, P.* [16] *Ins.* etc. *M, B, P.* [17] par *B.* [18] *Ins.* et *M.* [19] auncestre non conust *B* ; nous conust *L.* [20] *Ins.* cele *D, M, B, L, P.* [21] *Om.* Coment *B, L, P, T.* [22] *Ins.* a la garrauntie *B, L.* [23] dount il est *B, L, P.* [24] *Ins.* quasi diceret non *B, L, P.* [25] vous dirrez *M* ; il dirroit *B, L, P, T.* [26] fut *Al. Cod.* [27] *Om.* par *Al. Cod.* [28] estrange *M, L, P.* [29] T. oustast etc. *B* ; *ins.* ut supra *M, L, P.* [30] *Ins.* a un estrange *M, B, L, P.* [31] *Ins.* de par la garrauntie *B* ; *sim. L.* [32] B. *A* ; W. *D.*

abatement. And *a multo fortiori* [the impedient] cannot avoid the fine in this case.

Bereford, C.J. Not a similar case. For [in the case you put] the conusor by his conusance has affirmed a right in the person of the conusee, so that if the conusee can 'hap' the tenements from the conusor at any time [in the conusor's] lifetime or after his death, the conusor is barred. But that is not the case here. Richard cannot 'hap' from Thomas in his lifetime or afterwards what Thomas had not in his lifetime. And on the other hand, if you have enfeoffed me out of court of certain tenements and then you make such a conusance as this to another person of the same tenements, surely I am not thereby to lose my tenancy?

Passeley. In the case that you put your estate is vested in your person by continuance of seisin before the conusance; but, even if we suppose that in this case a gift was made to [Peter], no estate of the advowson was vested in his person, no more than in our person, for this is the first vacancy of the church. And, since to maintain our right we have shown so solemn a title [as a conusance in court] by his ancestor, whose heir he is, we cannot believe that he can be received to any averment by the country against such a title. And again, if we were impleaded for the land that his ancestor gave us, he would be bound to warrant us by the force of the conusance. And so too as regards the advowson; thus by parity of reasoning we shall defeat his estate.

Bereford, C.J. But how could you bind him to the warranty of a thing of which you are not seised?[1] And moreover, if you were impleaded by writ of right of advowson and were to vouch him, he would say that the church is full and counselled by [the act of] Thomas, through whose estate he would claim as a purchaser: for the estate that Peter claims is not as heir but as purchaser.[2]

Herle. If Thomas had given to Peter, and had then disseised him of the land and rent, and had then alienated and bound himself and his heirs to warranty, Peter as heir would be barred[3]; and *a multo fortiori* is he barred in this case.

Bereford, C.J. That case is not yours. Peter is this day by the gift of Thomas seised of the land and the rent as the 'gross' to

[1] Some books say 'of which he is seised.'

[2] Or 'as stranger.'

[3] Some add 'by the warranty.'

de la terre et de la rente come de gros a qi l'avowesoun etc.[1] par le doun T., le quel par nous ne serra[2] severé. Mès si issint fust qe P. fust hors et nyent seisi de la terre, auxint qe[3] vous supposet par vostre ensaumple, actioun[4] a recoverir l'avowesoun serreit moult feble. Par qei nous demaundoms si vous voletz l'averement.

Et habuit.[5]

{*Herle.*[6] Veez[7] cy la fyne vostre auncestre qe tesmoigne nostre estat, a qi vous estes privé, pur ceo qe vous estes heyre. Jugement.

Ing. Nous vous dioms qe a cel houre qe la fyn se leva il ne fut pas de tiel estat q'il poeit graunt fere, car il se avoyt demys.

Denom. A ceo ne devez estre r[ece]u, qe la fyn tesmoygne le revers, qe veot q'il tient les tenemenz com ceo q'il avoit de son don, et vous ne serrez de meillour condicion a voider la fyn qe vostre auncestre. D'autrepart, si bref de droit *de advocacione* fut porté vers nous, nous ly vouch[erioms] a garant par le fet son pere. Jugement, si *contra factum* put il rien demander.

Berr. Vous n'estes[8] pas seisi. Mès si vous fuyssez seisi, vostre r[eson] liereit bien.

Denom. Auxi avaunt fumes nous seisi com vous.

Ing. Seoms nous en un si le don se fit a nous[9] la fyn ou non.

Herle. A ceo n'avoms pas mester a respondre, qe nous sumes tut estrange a cel fet qe vous metez avaunt; eynz il coveynt qe vous r[espoignez] a nous del houre qe vous estes du saunk cely qe fet ceo est et avez conu la fyn qe tesmoygne nostre estat. Jugement, si a nul averement qe chiet en voidaunce de la fyne devez estre r[eceu].

Ing. Nous avoms pas conu la fyne.

Herle. Si avez, qe vous avez dit qe le don se fyt devaunt[10] la fyne, et par taunt l'avez graunté. Jugement.

Ber. Si l'avowesone de un eglise moy seyt doné par un chartre par glebbe ou saunz glebbe,[11] et la eglise seit pleyne xl. aunz après le don, en cel tens ne se puyt vester; mès a la prochaine voidaunz la

[1] est appendaunt *M*, *P*. [2] la quele avoweson ne purra ne serra de ceu gros par nous *M*; *sim. B*, *L*, *P*. [3] come *D*. [4] saction *M*, *B*, *L*; sa action *P*. [5] *Om.* et habuit *M*, *B*, *L*, *P*; *ins. A*, *T*. [6] The following from *S*, where the case is stated without proper names: compared with *T*, which also gives in another place the previous report. [7] Vee *S*; Veez *T*. [8] nest *S*. [9] *Corr.* fit avaunt (?). [10] deseaunt *T*; *obscure in S*. [11] *Om.* ou . . . glebbe *T*.

which the advowson [pertains], and from that 'gross' the advowson cannot [and shall not] be severed by us. If the case were that Peter were [not 'in' but] 'out' and not seised of the land—as you supposed in the example that you put—[then indeed] his action to recover the land would be very feeble.[1] Therefore we ask whether you will accept the averment.

Averment accepted.

{*Herle.*[2] See here the fine of your ancestor which testifies our estate. To that fine you are privy, being his heir. Judgment.

Ingham. We say that at the time when the fine was levied he was not in such a position that he could make a grant, for he had demitted himself.

Denom. To that you ought not to be received, for the fine witnesses the contrary, for it says that [the conusee] holds the tenements as those which he had of [the conusor's] gift. And you cannot be in a better position to avoid the fine than that in which your ancestor would be. Besides, if a writ of right of advowson were brought against us, we should vouch [you] to warrant by the deed of [your] father. Judgment, whether [you] can demand anything against the deed.

Bereford, C.J. Your argument would be good if you were seised. But you are not seised.

Denom. We were as much seised as [they] were.

Ingham. Let us agree whether the gift [to us] was made [before] the fine or not.

Herle. There is no need for us to answer to that, for we are total strangers to the deed that you produce. Rather it behoves you to answer us, since you are of the blood of him whose deed this is, and have confessed the fine which witnesses our estate. Judgment, whether you ought to be received to any averment that tends to avoid the fine.

Ingham. We have not confessed the fine.

Herle. Yes you have, for you said that the deed was made before the fine, and thereby you conceded the fine.

Bereford, C.J. If the advowson of a church be granted to me by a charter with glebe or without glebe, and the church be full for forty years after the gift, then during all that time [the advowson] cannot vest. Still at the next voidance the charter and the gift will be in

[1] Or, as we might say, he would have a very poor right to bring an action.

[2] We pass to another report of the same debate. One of our manuscripts contains both reports.

chartre et le don tendront lour force. Et mesqe xx. fines ou chartres de mesme l'avouesone seient fetes en le men[1] tens, il ne serreit my prejudicial a primer don. Et pur ceo avisez vous.

Herle. Jeo posse q'il out disseisi son fiz de la terre et la eut doné a moy par clause de garauntie, jeo bar[reie] le fiz a touz jours. Par qai nel puis jeo barrer del avowesone?

Berr. Moustrez nous q'il le disseisit, et donqe vostre r[eson] se lie.

Herle. Il ne puit autre disseisine fere del l'avowesone mès doner l'avowesone.

Ber. S'il pout avoir presenté a la prochaine voidaunce après qe le don se fit a son fiz et puis avoir graunté l'avowesone a un autre. En ceo cas par aventure il serreit barré, car ceo serreit disseisine apert. Mès tanqe il demort seisi de la terre, a quele l'avowsone passa, jamès ne serra l'avowesone severé de la terre en autre manere, si non par my son fet demene.

Hervy a *Herle.* Depuis q'il tendent d'averere qe au tens de la confection de cel fyne son pere n'avoyt rien etc., pur ceo q'il fut seisi de tenemenz en queux l'avowesone passa sicom la chartre suppose, il semble qe la fyne est voide, si ita est. Et pur ceo resceyvez l'averement.}

{*Ber.*[2] Par conisaunce fet en courte sanz rendre ne vest jammès avouesoun, si noun par possessioun ; mès par doun l'avowesoun passe, seit od glebe ou sanz glebe et sanz presentement.

Herle. Il serra lié a garauntie par la fin.

Ber. Il esturtra par mesme le plè. Par qei r[espoigne]z a li.}

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 95d, Suf.

Peter, son of Sewall de Rothenhale, was summoned to answer Robert de Drayton of a plea that he, together with Peter de Rothenhale, permit him to present a fit parson to a moiety of the church of Pagefeld,[3] which is vacant and belongs to his gift. Robert, by his attorney, says that one Thomas de Rothenhale was at one time seised of two acres of land with the appurtenances in the said vill of Pagefeld, together with the advowson of a moiety of the church, and to that moiety presented one Peter de Rothenhale, his clerk, who at his presentation was admitted and instituted in time of peace, in the time of Henry [III.], by whose death the moiety is vacant ; and that Thomas afterwards enfeoffed of the said land and advowson of a moiety one William of Drayton, father of Robert, whose heir he is ;

[1] meen *T.* [2] From the end of the brief version in *X.* [3] Mod. Pakefield.

force, and, though twenty fines or charters of the same advowson be made in the meantime, they will not be prejudicial to the first gift. So be advised.

Herle. I put case that [Thomas] disseised his son of the land and gave it to me with clause of warranty: I should bar the heir for ever. Why should I not bar him in the case of an advowson?

Bereford, C.J. Show that he did disseise him, and then your argument will be effective.

Herle. The only way of disseising a man of an advowson is to [take upon oneself to] give it.

Bereford, C.J. Yes, he might have presented at the next voidance after the gift was made to his son,[1] and then he might have given the advowson to another. In that case peradventure he would be barred, for then there would be a manifest disseisin. But so long as [the feoffee] remains seised of the land with which the advowson passed, the advowson can never be severed from the land, except by his own act.

Stanton, J., to *Herle.* They tender to aver that at the time of the making of the fine [the impedient's] father had nothing [in the advowson] because [the impedient] himself was seised of the tenements in which the advowson passed according to the tenor of the deed; and it seems that, if this be true, the fine is void. Therefore receive the averment.}

{Bereford, C.J.[2] By a conusance made in court without render, an advowson never vests; it vests by possession; but by a gift the advowson passes, with glebe or without: and this without a presentation.

Herle. [The impedient] will be bound to warranty by the fine.

Bereford, C.J. No, he will escape from that by the same plea. So answer him.}

Note from the Record (*continued*).

and he says that afterwards a fine was levied in the court of Edward [I.] in A. R. 12, before his justices here, between William of Drayton, plaintiff, and the said Thomas, impedient, by a writ of warranty of charter, of the said land and the advowson of a moiety of the church; and that by this fine Thomas confessed the land and advowson to be the right of William, as those which William had of his gift; and that from William the right of presenting descended to Robert, the now plaintiff, as son and heir; and

[1] We take the *si* of the *s'il* with which this speech begins to be the Latin *sic*, not the Latin *si*.

[2] The following is the end of the case in an abbreviated version.

Note from the Record (*continued*).

that the said Peter, son of Sewall, together with [the other Peter] unlawfully impedes him : damages, a hundred pounds.

Peter son of Sewall, by his attorney, after formal defence, confesses that the advowson of the moiety was the right of Thomas de Rothenhale ; and [says that] Thomas, long before the levying of the fine and also before the feoffment made to William, enfeoffed Sewall, Peter's father, of two perches of land and eleven shillingworths and eight pennyworths of rent with the appurtenances in the vill of Pagefeld, together with the advowson of the said moiety ; and that by this feoffment Sewall was seised of the tenements and advowson ; wherefore he says that by reason of that prior feoffment made to Sewall of the tenements and advowson, it belongs to Peter, son and heir of Sewall, to present to the said moiety ; and he produces a charter under the name of Thomas, which more fully witnesses the feoffment made to Sewall, and its date is ' at [*a blank*] in 50 Hen. [III.]' ; and therefore he says that by the feoffment made to William, Robert's father, and by virtue of the fine, no right in the advowson could accrue to William, because William at the time of the levying of the fine was not seised thereof and had nothing in the advowson, but long before then Thomas had demitted himself therefrom and enfeoffed Sewall by his charter as aforesaid ; and this he is ready to aver by the country ; and he demands judgment etc.

Robert says that by reason of the charter which Peter produces he [Robert] ought not to be precluded from action, nor ought Peter to be admitted to the averment by the country which he tenders ; for he [Robert] says that (whereas Thomas de Rothenhale, ancestor of Peter, whose heir he

13A. BURNEL *v.* BEAUCHAMP.[1]

Wast, ou piert qe un executour r[espoundra] soul sauns nomer soun coexecutour, et le heir de plein age avera bref de wast vers gardein de fait par graunt le Roy.

Wast vers executour de suo vasto sine suo coexecutore : et le bref estut par agard.

Edward Burnel porta soun bref de wast vers Alice qe fust la femme Waulter de Chaump.[2]

{Edwarde[3] Burnel porta bref de wast vers Johane[4] de Mohaut et dit q'el[5] avoit fet wast de terres, mesouns etc. q'el[6] tient en garde de son heritage.}

Denom. Ceaux tenemenz furent tenutz en chief de nostre seignour le Roy par services qe doune[7] garde etc. ; et n'entendomps

[1] Text from *A* : compared with *D*, *M*, *P*, *S*, *T*, *X*, and a short version in *L*. Headnotes from *A* and *P*. [2] Walt. Beauchamp *M* ; de Beauchamp *P*. [3] From *S* : compared with *T*. [4] Johan *T*. [5] qil *T*. [6] qele *T*. [7] dounent *M*, *P*.

Note from the Record (*continued*).

is, by the fine, which bears [*gerit*] record in itself, confessed the two acres and the advowson of the moiety to be the right of William, father of Robert, whose heir he is, as those which William had by the gift of Thomas, [thus] supposing William to be seised of the land and advowson, and Peter ought not in this case to be admitted to annul the fine by any averment by the country, against the testimony of the same, more especially as Peter is Thomas's heir in blood, so that if Robert were impleaded by a stranger for the advowson, Peter as heir would be bound to warrant it to him by virtue of the fine) he [Robert] demands judgment.

A day is given to hear their judgment here on the octave of Trinity, saving to the parties their arguments to be adduced on both sides.

Afterwards, the process having been continued to this day, to wit, the octave of Michaelmas A. R. 4, the parties come by their attorneys. And Peter says that Robert can claim nothing in the advowson; for he says that Robert, pending this plea between them, remised and quitclaimed from himself and his heirs all the right and claim that he had in the advowson, by Robert's writing, which he produces and which witnesses this; and thereof he demands judgment.

Robert, by Thomas de Rollesby his attorney, cannot deny this. Therefore it is awarded that Peter recover his presentation to the said moiety against him [Robert] and have a writ to the Bishop of Norwich that, notwithstanding Robert's claim, he admit a fit parson to the said moiety at Peter's presentation, and that Robert be in mercy. And Peter remits the damages.

13A. BURNEL *v.* BEAUCHAMP.[1]

One of two executors of the grantee of a wardship, if personally charged with waste by the heir, must answer although his coexecutor is not joined. The heir of one of the tenants in chief of the King can bring an action for waste against the grantee of the wardship, notwithstanding Mag. Cart. c. 4.

Edward Burnel brought his writ of waste against Alice, sometime wife of Walter Beauchamp.

{Edward[2] Burnel brought his writ of waste against Joan of Montalt, and said that she had made waste of lands, houses etc. which she holds in wardship of his heritage.}

Denom. These tenements are holden in chief of our lord the King by services which give wardship etc.; and we do not think that of

[1] This case is Fitz. *Wast*, 3. Proper names from the record.
[2] An alternative beginning.

pas qe des[1] tenemenz qe sount tenutz de Roy[2] altre qe le Roy en ceo cas deive amendes de wast avoir, qe la Graunt Chartre dit 'nos ab eo capiemus emendas.'

Staunt. Ceo est[3] a entendre de la garde q'est en la mayne le Roy; et ipse plene etatis est, et[4] veot averer qe vous avetz fait wast a sa desheritaunce. Par qei dites outre.[5]

Denom. Nostre seignour le Roy dona la garde de ceaux tenemenz a Robert de Mohaut, qi executours nous sumes ove Roggier de la Mare,[6] nient nomé en le bref. Jugement du bref.

Herle. Vous mesmes avetz fait le wast auxi com il dient.[7]

Ber.[8] Il vous dient qe vous avez fet le wast. Quei respondez vous a ceo?

Denom. Nous entendomps qe a cesti bref ne devoms r[espoundre], qe A. est executour saunt ceo qe soun coexecutour soit nomé, qe ele ne serreit mye r[espoundu] sauntz luy.

Berr. C'est un trespas personel,[9] de quei il vous covent excuser de ceo qe eux vous surmettent.[10]

Denom. Nul wast fait. Prest etc.

Et alii econtra.[11]

13B. BURNEL *v.* BEAUCHAMP.[12]

Un A. porta son bref de wast vers B., et dit q'il avoit fet wast des tenemenz 'quas habet in custodia.'

Denom. Nous n'avom rien en la garde si noun du lees nostre seignour le Roi, et le Roi ly ad reservé les amendes par la Grant Chartre de tenemenz qe de ly sount tenuz, si wast seit fet. Et demandoms jugement si des choses qe le Roi ly ad reservé par statut devet estre r[espondu].

Herle. Vous estes gardein, et avez fet wast a nostre desheritaunce.

Et fut chacé outre.

Denom. Le Roy lessa la garde a un William, qe ordina moi et

[1] qe de wast fet en *M*, *P*. [2] *Ins.* dont la garde au Roy append en qi mayn qe le wast seit fet qe *M*, *P*. [3] *Om.* est *A*. [4] Herle (*not* Staunt). Si E fut unqore deinz age auqes [autre?] serreit mes il est de pleyn age et *S*, *T*. [5] desheritaunce, jugement si a cesti bref etc. Ber. Dites outre *M*, *P*, *S*, *T*. [6] Mareys *P*; de la Mare *S*, *T*; *ins.* nostre coexecutour *M*, *P*. [7] com nostre bref suppose, prest etc. *M*, *P*, *S*, *T*. [8] *Om.* this speech *A*, *D*. [9] afferme sur vous *S*, *T*. [10] covent respondre, par qei etc. *P*. [11] *Ins.* et sic ad patriam *S*, *T*. [12] Text of this version from *R*.

tenements which are holden of the King and of which wardship belongs to the King anyone but the King ought to have amends for waste, for the Great Charter says 'we from him will take amends.'

STAUNTON, J. That refers to a case where the wardship is in the King's hand;[1] and here [the plaintiff] is of full age and desires to aver that you have made waste to his disheritance.[2] Therefore plead over.

Denom. Our lord the King granted the wardship of these tenements to Robert de Montalt, whose executor we are, along with Roger de la Mare, who is not named in the writ. Judgment of the writ.

Herle. You yourself made the waste as alleged [in our writ].

BEREFORD, C.J. They tell you that you made the waste. What is your answer to that?

Denom. We do not believe that we ought to answer to this writ, for [the defendant] is executor, and her co-executor is not named; and without him she would not be answered.

BEREFORD, C.J. This is a personal trespass and you must excuse yourself from what is alleged against you.

Denom. No waste done. Ready etc.

Issued joined.

13B. BURNEL *v.* BEAUCHAMP.[3]

One A. brought his writ of waste against B. and said that he had made waste of the tenements 'which he has in wardship.'

Denom. We have nothing in wardship except by the lease of our lord the King, and by the Great Charter the King has reserved to himself the amends for waste of tenements holden of him if waste be done. We pray judgment whether you should be answered touching things that the King has reserved to himself by Statute.

Herle. You are guardian and have made waste to our disheritance.

[*Denom.*] was driven further.

Denom. The King leased the wardship to one William, who

[1] Mag. Cart. c. 4. The words occur in a clause dealing with waste done by one to whom the King has committed the wardship. As to the distinction between a 'committee' and a 'grantee' of a wardship, see Sec. Inst. 13.

[2] Some of the books give the substance of this speech to Herle.

[3] This report from a single manuscript.

un R. ses executours, le quel R. deit estre chargé tant avant com moy, nient nomé en bref. Jugement du bref.

Herle. Vous avet soul fet le wast.

Denom. Nul wast fet.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 153d, War.

Alice, wife that was of Walter de Bello Campo, was summoned to answer Edward Burnel of a plea wherefore she made waste and sale of the lands, houses, woods and gardens which she had in wardship of the inheritance of Edward in Brome[1] next (*iuxta*) Bydiford, to his disherison. Edward, by Henry de Hoxton his attorney, complains that, whereas Alice had in wardship of his inheritance the manor of Brome, she made waste and sale therein, to wit, by digging pits in the land of the manor two perches long and one perch broad, and selling thence the marl to the value of forty shillings, and by pulling down and selling a chamber, price twenty pounds, a kitchen, price a hundred shillings, a bakehouse, price a hundred shillings, an ox-stall, price a hundred shillings, a press (*pressuram*), price forty shillings, and by felling and selling thirty oaks, price two shillings apiece, twenty

14. BOX *v.* PALMER.[2]

De compoto : ou fust dit qe il avoit terre et tenement : jugement de bref etc.

Monstravit abatu pur ceo q'il avoit terre et tenementz par quei estre destreynt.

Johan de Boy[3] porta le *monstravit de compoto* vers un B.

Scrop. Yl ad terres et tenemenz par quey il puist estre justicé. Jugement du bref.[4]

Hedoune. Vous avetz vostre bref destente[5] pendaunt en Baunc le Roy, par quey vous avez vostre recoverir.

Scrop. Cestuy bref est douné par statut ou il n'ad terre ne tenement etc., et nous voloms averrer q'il ad xl. s. de terre. Jugement.

Herle. Yl n'ad qe les deux parties d'une mees et iiij. s. de rent q'il prist en mariage ove sa femme.

Stauntone. Yl dirra q'il ad terre ou tenement ad suffic[ienciam].[6]

Scrope. Le statut overe pur nous saunz mencioun faire de suffic[iencie]. Jugement.

[1] Broom Court, near Bidford, a little south of Alcester. [2] *Vulg.* p. 69. Text from *B*: compared with *L*. [3] Johan Box *L*. [4] *Ins.* qe done est par statut la ou yl nad terre ne tenemenz par quei estre justice *L*. [5] de descente *L*; *corr.* de deceit (?). [6] *Sic* in full *L*. The end of the case is wanting in *L*.

appointed me and one R. his executors; and R. ought to be charged as much as I ought, and he is not named. Judgment of the writ.

Herle. You by yourself did the waste.

Denom. No waste done.

Note from the Record (*continued*).

ashes, price six shillings and eight pence apiece, twelve elms, price five shillings apiece, forty apple-trees, price two shillings apiece, twelve pear-trees, price four shillings apiece, to his disherison: damages, a hundred pounds.

Alice, by Nicholas of Assheton her attorney, after formal defence, says that she made no waste or sale in the said manor as Edward complains; and of this she puts herself upon the country.

Issue is joined. The sheriff is bidden to go in proper person to the tenement wasted and there to cause to come before him twelve [jurors] and by their oaths in the presence of the parties diligently to inquire of the said waste and to return the inquest here on three weeks from Michaelmas under seal. At that day, the sheriff not having sent the writ, he is bidden as before to inquire and return the inquest on the morrow of the Purification.

14. BOX *v.* PALMER.[1]

In abatement of the writ of account given by Stat. Marlb. c. 23 the defendant may plead that he has land and tenements by which he may be distrained to render an account. New statutory writs are not to be extended beyond the statutory cases.

John Box brought a writ of account against one B.

Scrope. He has lands and tenements by which he may be 'justiced.' Judgment of the writ [which is given by Statute].

Hedon. You have your writ of deceit[2] pending in the King's Bench, whereby you could have your recovery.

Scrope. This writ is given by Statute where [the defendant] has not land or tenement, and we will aver that he has land to the [yearly] value of forty shillings. Judgment.

Herle. He has only two parts of a house and four shillingworths of rent which he took in marriage with his wife.

Stanton, J. He must say that he has land or tenement in sufficiency.

Scrope. The Statute says nothing of sufficiency and makes for us.

[1] What is perhaps this case at a later stage appears as Fitz. *Briefe*, 791. Proper names from the record.

[2] Our books give 'extent' and 'descent.' But a writ of deceit was provided for this case: see Sec. Inst. 144.

Berr. Nous devoms meyntenir auncienes brefs la ou yl purroit estre meyntenutz plus tost qe les noveles. Par quey[1] il tendit d'averrer q'il ad terre et tenement par quey il puist estre justicé. Par quey il covent qe vous respoignez.

Malm. Ceo serreit grant duresse, qar puist estre qe moun baillif moy est tenu en cc. livres de arr[ierages]; yl se purchase ij. acres de terre et ij. deners de rente; et issint ne l'amenera jamès al acounte rendre.

Scrop. Il serroit en prejudice le Roy de mayntenir cest bref d'acompte, qar tant com yl ad terre et tenemenz le viscounte purra r[espondre] des issues, et c'est avauntage le Roy.

Herle. Q'il n'ad terre ne tenemenz par quey estre destreint al acounte rendre. Prest etc.

Scrop. Yl ad terre et tenemenz par quey estre destreint al acounte rendre. Prest etc.

Et fuist l'averrement r[ece]u. Et dictum fuit quod non habuit etc.

{Nota[2] en un *monstravit de compoto* le pleintif fut chacé par la Court a dire si le defendaunt out terres ou tenemenz par les queux il pout estre destreint a rendre acompte. Il tendi d'averrer qe noun. Et le defendaunt lui traversa. Et sic ad patriam, *non obstante* q'il purreit avoir son bref de desceite.}

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 35d, Ebor.

Henry le Palmere was attached by his body to answer John Box of a plea that he render to him a reasonable account of the time for which he was the receiver of John's money. The plaintiff, by his attorney, says that whereas the defendant was the receiver of his money at Kingeston on Hull from Sunday before Christmas in 35 Edw. I. to the Conversion of St. Paul in 3 Edw. II. and received by parcels a hundred and ten pounds to trade with (*ad mercandisandum etc.*), he refused and refuses to render account: damages, a hundred pounds.

The defendant comes and, after formal defence, says that he ought not to answer him to this writ; for he says that this writ of *monstravit* aids those who exact an account in case where such receivers or bailiffs have no lands or tenements whereby they may be distrained to render such account, and he says that he has lands and tenements at the vill of Pontefract and elsewhere in the said county by which [he may be distrained to render such an

[1] *Corr. om.* Par quey (?). [2] Text from *M*: compared with *P*.

Bereford, C.J. We must maintain ancient, as contrasted with modern, writs whenever it is possible.[1] He has tendered to aver that he has land and tenement by which he may be justiced. So it behoves you to answer.

Malberthorpe. That would be a great hardship, for it may be that my baillif owes me two hundred pounds in arrears, and buys two acres of land and two pen'orths of rent, and then I shall never be able to bring him to render account.

Scrope. To maintain this writ of account would be prejudicial to the King, for, so long as the man has land or tenement, the sheriff can answer for the issues, and that is to the King's advantage.

Herle. He has no land or tenements by which he may be distrained to render account. Ready etc.

Scrope. He has land and tenement by which he may be distrained to render account. Ready etc.

The averment was received. It was said that he had no [land] etc.

{In[2] a writ of account (*monstravit de compoto*) the plaintiff was driven by the Court to say whether the defendant had land or tenements whereby he could be distrained to render an account. The plaintiff tendered to aver that [the defendant] had none. The defendant traversed him. And so to the country, albeit the plaintiff might have a writ of deceit.}

Note from the Record (*continued*).

account], and so had on the day of writ purchased, to wit, 2 Feb., 3 Ed. II.; and of this he puts himself upon the country.

Issue is joined, the defendant finding six mainpernors. Subsequently a jury at York finds that the defendant has, and on the day of writ purchased had, a messuage in the vill of Pontefract in right of one Alice his wife, which is worth six shillings a year; and that he has not, so far as the jurors know, any other tenement in the said county or elsewhere. The parties are told to keep a day for judgment in the Bench. Afterwards the defendant confesses that in the time aforesaid he received seventy-seven pounds of the plaintiff's money and is ready to account. Three auditors are assigned and he is committed to the Fleet. Afterwards, the account having been heard, the auditors record before the justices here in presence of the parties that the defendant is in arrear in thirty-three pounds, eighteen shillings, and tenpence halfpenny. So he is recommitted to the Fleet until etc.

[1] Apparently, this being a new writ, the Chief Justice does not intend to extend its sphere.

[2] This note of the case occurs in two of our books. Two other books give the above report.

15. THORNE *v.* PECHE.[1]

Assise de novele disseisine, ou le tenaunt dit qe le pleintif fuist soun vileyn : et le pleyntif dit q'il porta une assise de novele disseisine vers l'aele le tenaunt et ele lui accepta com fraunc etc. : le tenaunt dit q'il ne clama rien [par my soun aele].

Novele disseisine, ou dit fut qe il ne dut estre respondu par ceo q'il fut vylein, et il allega jugement q'il fut accepté franc vers soun ael, par qi il ren ne clama.

William atte Thorne[2] porta un asise de novele diseisine vers Bertholemeu Pecché etc. et autres etc. {et mist en sa pleinte e en vewe des jorours j. mies e xx. acres de terre.[3]} Le quel William fut en court par attourné.

Pass. William ne deit estre r[espondu] qar il est nostre villein et nous seisi de lui come de nostre villein et de son frere eisné[4] com de nostre villein, et nous et noz auncestres seisi de William et de ses auncestres de temps dont il n'y ad memorie com de lour villeins. Et s'il le veot dedire, prest etc.

Scrop. A ceo n'avendrez mye, qar[5] mesme cesti William q'ore se pleinte einz ces hures porta un assise de mortdauncestre de la mort son pere de mesme ceux tenemenz q'ore sount mys en vewe et en pleinte vers Lucé Pecché vostre ael[6] etc., ou trové fut[7] par verdit de assise qe son pere morust seisi etc. et q'il fut procheine heir.[8] Et de l'hure q'il recoveri en court qe porte recorde mesmes les tenemenz vers vostre aele,[9] qi heir vous estes, com franc homme et de franc estate,[10] demandoms jugement si vous puissez sa persone par excepcion de villeinage reboter.

Toud. Sire, nous vous dioms qe le manoir de Soule[11] de quele manoir cesti W. et ses auncestres sount villeins si fut en la seisine Herbert Pecché nostre ael, qe de ceo morust seisi en son demene com de fee et de dreit. De quel manoir Lucé, vers qi il allegge ceo recoverer, fut dowé en allowaunce des autres tenemenz. Après qi mort mesme cele manoir retourna a Bertholemeu com a fitz et heir l'avauntdite,[12] et de B.[13] a Bertholemeu q'ore est tenaunt com a fitz

[1] *Vulg.* p. 71. Text from *M* : compared with *P*, and divergent versions in *B*, *R*, *S*, *T*, *Y* (f. 24). Headnotes from *B* and *P*. [2] Corn' *B* ; Fourne *L*. [3] From *Y*. [4] son piere ael et son frere, jugement (*end of speech*) *B*. [5] *Ins.* en le eyre de Middlesex devaunt Sire Jon de C. et ses compaignons *B* ; en le eyre de Midd. devant Sire Johan de Berewyk e ses compaignons *Y*. [6] aele *B*, *P* ; Luce vostre aele *R*. [7] trove fuist qil fuist franc homme et de ceo etc. et puis trove fuist *B*. [8] seisi par quei fuist agarde q'il rec[overast] *B*. [9] ael *M* ; aele *P*. [10] *Ins.* et *M*. [11] Cullu' *R*. [12] lavantd' H. *P*. [13] *Ins.* desc' *P*.

15. THORNE *v.* PECHE.[1]

A. brings a mortdancestor against a woman (*B.*) who holds in dower a manor of which the land is parcel, and he recovers after verdict. Subsequently he is ejected by *C.* the grandson of *B.*, the manor having descended to *C.* from *B.*'s husband. In an assize of novel disseisin the recovery against *B.* will not bar *C.* from pleading that *A.* is *C.*'s villein and that *C.* is seised of *A.*

William atte Thorne brought an assize of novel disseisin against Bartholomew Peche etc., and others etc., and put a messuage and twenty acres of land in his plaint and the view of the jurors. William was in court by attorney.

Passeley. He ought not to be answered, for he is our villein, and we are seised of him as of our villein and of his elder brother as of our villein, and we and all our ancestors were seised of William and his ancestors from time immemorial as of our villeins. And if he will deny it, ready etc.

Scrope. To that you shall not get, for before now [in the eyre of Middlesex, before Sir John of C. and his fellows], the present plaintiff brought a mortdancestor on the death of his father for these same tenements which are now put in view and in plaint against Lucy Peche, your grandmother etc., where it was found by verdict of the assise[2] that his father died seised etc. and that he was next heir.[3] And we pray judgment whether you can rebut his person by a plea of villeinage, since in a court that bears record as a free man and of free estate he has recovered these same tenements against your grandmother.

Toudeby. Sir, we tell you that the manor of [Cowley], of which manor this William and his ancestors are villeins, was in the seisin of Herbert Peche our grandfather; and that he died seised of it in his demesne as of fee and of right; and that of this manor Lucy, against whom he alleges this recovery, was endowed in allowance for other tenements; and that after her death this manor returned to Bartholomew as son and heir of the said Herbert, and from him it descended to the tenant in this action as son [and heir]. And since we claim

[1] Proper names from the record. There is considerable divergence between the reports of this case, but the discussion follows the same lines in all of them.

[2] One book inserts 'it was found that he was free and afterwards it was found.'

[3] One book adds that he recovered by judgment.

etc. Et demandoms jugement, de l'hure qe nous ne clamoms rien par my Lucie, einz la tenoms estraunge qaunt a ceo, si nul recoverer qe se fit vers lui vous puise [1] avauntage doner.

Herle. Ab [2] inicio chescon homme de mounde [3] fut franc, et ley est si favorable a franchise qe celui q'est une foitz trové franc etc.[4] en court etc. pur franc deit estre tenu a tous jours,[5] si ceo ne soit qe son fet demene plus tardif le fet villein.[6] Et demandoms jugement depus q'en court qe porte recorde trové fut qe nous esteimes [7] franc etc. vers vostre aele [8] etc., si vous q'estes de sang Lucie nostre persone en le sang pussez estraunger [9] sanz moustrer le plus tardif fet etc.[10]

West. Lucie vers qi vous alleggez vostre recoverer ne vous poet nent [11] par ceste excepcion reboter. En temps de quele recoverir Bertholemeu vers qi ceste assise est arramé esteit en berce. Qaunt il vint a son age il vist qe William ne se voleit justiser auxi cum fere deust. Par qei Bertholemeu le prist et le tynt [12] com son villein et est huy ceo jour seisi de lui com de son villein. Par qei n'entendoms mye qe nul recoverer qe se fit vers celui qe lui reboterer ne put, le puise [13] vers nous fere responable. Et d'autrepart, si Lucé nostre aele [14] eust relessé et quiteclamé tote maniere de action de villeinage, et nous eussoms porté nostre bref de neifté, ja ne serroms par son fet barré a demander de la seisine mon ael [15] ou mon pere. Nent plus de ceste part.

{*West.*[16] Si Lucé par quiteclamance ust relessé et quiteclamé a cele A. tous manieres vyleyns services et nous suisoms a demander son corps par un bref de dreit et preymes nostre title de H. nostre ael descendant a nous com ore foums, entendet vous qe la quiteclamance nous serreit barre ?}

Herle. Relès n'est pas title. Mès recoverer en court qe porte recorde si est un grant title vers celui vers qi homme recovere.[17]

Ber. S'il fut ore r[espondu] si serreit il enfranchi par my le recoverer vers celui par my qi B.[18] ne cleime rien, qar Lucé est tut estraunge etc.

[1] *Om.* puise *B.* [2] This declaration is not in *B.* [3] *Om.* de mounde *P.* [4] *Om.* etc. *P.* [5] Herle. Franchise est si reale chose qe cely qest une foize enfranche est franc pur tous jours *R*; *sim. S*, *T.* [6] The parallel passage in *B* ends with 'et hoc in favorem libertatis.' [7] fuimes *P.* [8] ael *M*; aele *P.* [9] nostre persone pussez reboter *P.* [10] moustrer fet pluis tardif *P.* [11] *Om.* nent *P.* [12] le prist et justis' *L.* [13] plus *B.* [14] ael *M*; ael *P.* [15] aele *M.* [16] This speech is taken from *R.* [17] *Ins.* et vers ses heirs et vous estes heir mesme celi vers qi nous recoverymes *P*; *sim. L*; *ins.* jugement en le court le Roy lie plus qe ne fet quietclame qe puist estre dedit *B.* [18] G. *M*; B. *P*, *L.*

nothing through Lucy, but hold her as a stranger in this respect, we pray judgment whether any recovery had against her can give you any advantage against us.

Herle. In the beginning every man in the world was free, and the law is so favourable to liberty that he who is once found free [and of free estate] in a court [that bears record] shall be holden free for ever, unless it be that some later act of his own makes him villein.[1] And since in a court that bears record it was found that we were free etc. against your grandmother etc., we pray judgment whether you, who are of the blood of Lucy, can rebut our person [2] without showing some later deed etc.

Westcote. Lucy, against whom you allege your recovery, could not rebut you by this plea [of villeinage]. But in her time Bartholomew, against whom this assize is arraigned, was in the cradle. And when he came to his age, he saw that William would not submit to be 'justiced' as he ought. So he took him and held him [3] as his villein, and is this day seised of him as of his villein. And we do not think that any recovery had against one who could not rebut him, would make him a person to whom we must answer. And again, if Lucy, our grandmother, had released and quitclaimed to him every kind of action of villeinage, and we had brought our writ of naifty, still we should not have been barred from demanding on the seisin of our grandfather and of our father. And no more [shall we be barred] in this case.

{*Westcote.*[4] If Lucy by a quitclaim had released and quitclaimed to [the plaintiff] all manner of villein services, and we sued to demand his body by a writ of right [5] and took our title from H. our grandfather with descent to us, as now we do, think you that the deed would bar us?}

Herle. A release is not a title; but a recovery in a court that bears record is a great title against him against whom it is made.[6]

Bereford, C.J. If now he were answered, he would be enfranchised by a recovery against one through whom Bartholomew claims nothing, for Lucy is a total stranger.

[1] Another version makes Herle say, 'Freedom is so royal a thing that he who is once enfranchised is free for ever.'

[2] Or 'can estrange our person in the blood.'

[3] Or 'and justiced him.'

[4] Another version of Westcote's speech.

[5] Should it not be 'writ of naifty'?

[6] One books adds, 'A judgment in the King's court is more binding than a quitclaim which may be denied.'

Herle. Si B. eit dreit en W. a demander le come son villein, eit [1] bref de neifté.

{*Ber.*[2] Sy vous fuistes ore r[espondu] si serroit il forclos a chescun bref de dreit.}

Pass. Nous voloms averrer qe nous fumes seisi de lui com de nostre villein. Par qei il ne estut ja de porter nul [3] bref de neifté.

Et d'autrepart [4] William atte Thorne fut nounsuwy. Par qei etc.[5]

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 58, Mid.

The assize comes to find whether Bartholomew Pecche, Roger son of Gilbert, and John Reyner wrongfully and without judgment disseised William atte Thorne of his free tenement in Couele [6] since the first [passage of Henry III. into Gascony]. The plaintiff complains that they disseised him of a messuage and sixteen acres of land.

And Bartholomew comes, and Roger and John do not come, but one Richard de Walsham answers for them as their bailiff. (*Note continued on the opposite page.*)

16A. ENGLEFIELD *v.* OXFORD (EARL OF).[7]

Nota ou l'avouwaunt fut chacé a fere avowerie sur le tenaunt etc.

Si jeo face avowerie com gardein par la reson qe le pleintif tynt de l'enfa unt en ma garde esteaunt etc., le pleintif serra bien receu de sey fere privé de [8] moy immediate, com a dire 'Jeo tenk les tenemenz etc. de vous sanz meen et vous seisi de mes services, jugement si des services dont vous estes seisi par my ma mayn etc.[9] par my la mayn vostre [10] tenaunt immediate, si en autri noun sur moy pussez avower,' *non obstante* q'il afferme [11] le droit de la seignurye le tenaunt en l'enfaunt: Teste Roberto de Weer [12] Counte de Oxenforde etc.

[1] *Ins.* soun recoveryr par *P*, *L*. [2] *Ins. B*. [3] nostre *P*. [4] Et au dreyn *L*. [5] Ber. agarde l'assise et puis W. fuist noun siwy *B*. Berr. demanda lassise. Lassise vient a la bare et A. fut non suy. Par qai agarde fut quod nichil capiat per breve, *S*, *T*. Et sic nota qe le fete la mere nest pas barre au fiz sil neit rien par descent. E pus W. enparla lungement e fust nounsuy etc. *Y*. [6] Mod. Cowley. [7] Text from *M*: compared with *L*, *P*. Headnote from *P*. [8] au *L*. [9] *Ins.* cum *P*. [10] par my ma mayn cum de vostre *L*. [11] ad afferme *P*; ad ferme *L*. [12] Veer *P*, *L*.

Herle. If Bartholomew has a right to demand William as his villein, let him have a writ of naifty.

{BEREFORD, C.J.[1] If you were answered in this action, he would be foreclosed from every writ of right.}

Passeley. We will aver that we were seised of him as of our villein. Therefore there was as yet no need to bring our writ of naifty.

{BEREFORD, C.J., awarded the assize.[2]} And afterwards William was nonsuited.[3]

Note from the Record (*continued*).

Afterwards the said William does not prosecute etc. Therefore it is awarded that the said Bartholomew and the others [*et alii* interlined] go thence without day, and that the said William and his pledges for prosecution be in mercy. Nothing as to the pledges, for he merely pledged faith to prosecute ('Nichil de plegiis quia per fidem etc.') The greater part of the judgment is written over an erasure, a whole line of writing having been completely erased.

16A. ENGLEFIELD *v.* OXFORD (EARL OF).[4]

To an avowry by *X.* as guardian it is a good reply that the plaintiff holds of *X.* himself.

If I make an avowry for the reason that the plaintiff holds of the infant who is in ward to me etc., the plaintiff may well be received to make himself immediately privy to me, as by saying 'I hold these tenements of you without any mesne, and you are seised of my service: judgment, whether for service, whereof you are seised by my hand as by the hand of your immediate tenant, you can avow upon me in the name of another.' And this is so, although he [the avowant[5]] affirms the right of the seignory over the tenant to be in the infant. Witness a case concerning Robert de Vere, Earl of Oxford, etc.

[1] This is not in the book whence our text is taken.

[2] Some books add that the assize came to the bar.

[3] One book says, 'And so note that the mother's deed is no bar to the son if he has nothing by descent. And afterwards W. imparled a long time and was nonsuited.'

[4] Proper names from the record.

[5] Apparently this must be so. What is thought remarkable is that a sort of disclaimer ('I am not your lord') should be open to contradiction.

16B. ENGLEFIELD *v.* OXFORD (EARL OF).[1]

Un Rogier porta son replegiari vers un Counte de Oxeneforde.

Denom. Nous avowom etc., et par la reson qe cesti R. tent un mees etc. de William nostre tenant, que heir est en nostre garde, par homage etc. feauté et seute a sa court de C. etc.; dez queuz services etc.; et pur taunt de rent arere de tel terme si avowoms la prise de un chival com gardeyn; et pur ceo q'il fit defaute tel jour a la court de C. fust agardé q'il fust destreynt, et issi avowe il la prise en dreit del autre chival.

Scrop. Jugement de ceste avowerie, qar nous tenoms de vous le leu la ou la prise fust fete et tut la ville de B. en demene et en service saunz nulle forprise. Jugement, si en autre noun pusse sur nous destresce avowere.

Malm. Il y unt deus maners en la ville de B. Et vous dioms qe l'un maner tent il de nous sans mene par certeyn services et l'autre manere tent il de lez auncestres l'enfant.

Scrop. Cest qe vous appellez ij. maners si est tut un maner. Et vous diom qe nous tenoms tote la ville de B. en demene et en service, sanz nul forprise, du Counte.

Malm. Que vous tenet un mees, xl. acres de terre del enfaunt prest etc. et issi nent enterement de nous, prest etc.

Et sic ad patriam.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 72, Oxon.

Robert de Veer, Earl of Oxford, was summoned to answer Roger de Englefeld of a plea wherefore he, together with Richard de la Cornere, Peter Bel, Roger le Warenner, and William de Hameldene, took Roger's beasts and unlawfully detained them against gage and pledge. Roger complains that on [11 Sept. 1307] Monday next before the Exaltation of the Cross in 1 Edw. II., in the vill of Lathebroke, in a place called Denefeld, the Earl, together etc., took two horses of Roger's and unlawfully detained them against gage and pledge until etc.: damages, ten pounds.

The Earl, by his attorney, after formal defence, avows the taking; for he says that Roger held of one John de la Leghe forty acres of land and eight of wood in the said vill of Lathebroke by fealty and the service of three shillings a year and by doing suit to John's court at Lathebroke from three weeks to three weeks; and that of these services one Avelina, mother of John, was seised by the hand of William de Englefeld, father of Roger,

[1] Text of this report from *L*.

16B. ENGLEFIELD *v.* OXFORD (EARL OF).[1]

One Roger brought his replevin against the Earl of Oxford.

Denom. We avow etc. for the reason that the plaintiff held a messuage of [John] our tenant, whose heir is in ward to us, by homage, fealty, and suit to his court of C. etc.; of which services etc.; and for so much rent arrear for such a term we as guardian avow the taking of one horse; and for default made on such a day in the court of C. it was adjudged that [the plaintiff] be distrained, and for this reason we avow the taking of the other horse.

Scrope. We pray judgment of this avowry, for we hold the place where the taking was made and the whole of the vill of B., without any exception, of you in demesne and in service. Judgment, whether you in the name of another can avow a distress upon us.

Malberthorpe. In the vill of B. there are two manors. And we say that he holds one of them immediately of us by certain services, and the other manor he held of the infant's ancestors.

Scrope. What you call two manors is all one manor. And we tell you that we hold of the Earl [himself] the whole vill of B. in demesne and in service without any exception.

Malberthorpe. You hold a messuage and forty acres of land of the infant: ready etc.; and so you do not hold [the vill] entirely of us: ready etc.

Issue joined.

Note from the Record (*continued*).

whose heir he is; and he says that after John's death, because he held his land of the Earl by knight's service, the Earl seised the wardship of John, son and heir of the said John de la Leghe, by reason of his minority; and because nine pence of the said three shillings were arrear from the term of St. John Baptist before the day of the taking, he took one horse; and because Roger made default at the court of the said heir at Lathebroke holden on [26 June, 1307] the Monday after the feast of the Apostles Peter and Paul before the day of the taking, wherefore it was awarded by the suitors that Roger be distrained, the Earl, as guardian, took another horse of Roger's by way of distress in the said place, which is parcel of the said tenements.

Roger says that the Earl cannot avow the taking as lawful, for he says that he holds the whole of the vill of Lathebroke in demesne and in service of the Earl himself and by certain services; and this he is ready to aver

[1] We find this report only in one of our books.

Note from the Record (*continued*).

etc.; and therefore he demands judgment whether in this case the Earl can or ought to avow this taking upon Roger by the mean of another (*per medium alterius*).

The Earl says that in the manor of Lathebroke there are two manors, to wit, one which Roger holds of the Earl immediately, and another which John de la Leghe, father of the said heir, held of the Earl by certain services, and of which Roger held the forty acres of land and eight of wood,

17A. CORNWALL *v.* HACCUMBE.[1].

Bref de droit de garde vers enfaunt deinz age, ou le bref fust chalengé pur çoe qe le bref ne fit mencioun qe çoe fust de droit sa femme: et puis woucha, et le wouché prest en court et entra en la garrauntie etc.

Un A. porta son bref de droit de garde.

Pass. Nous demandoms jugement du counte, q'il n'ad mye lié seisine des services qe dounent garde,[2] einz soulement dyl homage, qe ne doune nyent garde, qe homme puist tenir par homage saunz service de chevalier.

Toud. Nous ne sumes pas en un prise des avers a demander les services, mès en un bref de droit; et nous dyoms qe l'auncestre l'enfaunt tyent de nous par service de chevalier et morust en nostre homage. Jugement, si ceo ne suffit.

Stanton. Dites outre.

Pass. C'est un bref de droit et yl deinz age, et il est issi pas gardeyn, a quel bref enfaunt deinz age ne puist estre partie. Jugement.

Stant. Dites outre.

Pass.[3] Yl ad dit en counte countant qe c'est du droit sa femme, et le bref veot 'eo quod custodia ad eos pertinet' saunz faire mencioun de qi droit. Jugement de la variaunce.

Stant. Nous n'averoms[4] nul tiel bref en la chauncellerie 'de iure uxoris.' Par quey dites outre.

Pass. Nous n'avoms ren en la garde forsqe de lees un P. et luy vouchoms a garraunt.

Toud. Voucher ne devetz, qar vous ne clametz ren qe chatel, et le voucher est en le droit. Et d'autrepart, nous voloms averrer qe

[1] *Vulg.* p. 71. Text from *B* (Hil.): compared with *L* (Pasch.). [2] *Om.* qe . . . garde *L*. [3] *Om.* Pass. *B*; *ins. L*. [4] Vous naverez *L*.

Note from the Record (*continued*).

whereof the *locus in quo* is parcel, by the said services; and of this he puts himself upon the country.

Roger says, as before, that he holds the whole vill in demesne and in service of the Earl without any mesne as one and the same manor; and that so it is he prays may be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Michaelmas.

17A. CORNWALL *v.* HACCUMBE.[1]

In a writ of right of ward the tenant vouches. The voucher is opposed because the tenant (1) has only a chattel and (2) was the first to abate. But the vouchee is received to warrant gratis.

One A. brought his writ of right of ward.

Passeley. We demand judgment of the count, for he has not laid seisin of any services that give wardship, but only of homage, which does not give wardship, for one may hold by homage without knight's service.

Toudeby. We are not now demanding services [by avowry] in replevin. We are in a writ of right, and we say that the ancestor of the infant held of us by knight's service and died in our homage. Judgment, whether that be not enough.

STANTON, J. Plead over.

Passeley. This is a writ of right, and [one of the demandants] is within age and is here by guardian, and to this writ an infant cannot be party. Judgment.

STANTON, J. Plead over.

Passeley. He has said in his count that this is of the right of his wife, and the writ says 'for that the wardship belongs to them,' without saying in whose right. Judgment, of the variance.

STANTON, J, [You] will have no such writ in the Chancery with 'in right of the wife' in it. So plead over.

Passeley. We have nothing in the wardship but by the lease of one Peter, and him we vouch to warrant.

Toudeby. You ought not to vouch, for you claim nothing but a chattel, and voucher lies in 'the right.' Besides, we will aver that

[1] The proper names are taken from the record. Compare the case of 'Umfraville *v.* Haccombe,' reported in our vol. i. p. 169.

vous fuistes le primere qe abatist [1] en la garde après la mort nostre tenaunt. Jugement.

Pass. Veietz cy P. prest d'entrer et de [2] garrantir et r[espondre]. Jugement, s'il ne doit estre r[ece]u.

Et postea erat receptus.

Pass. L'auncestre l'enfaunt tyent de nous par eigné feffement qe de vos auncestres. Prest etc.

Et alii econtra, et sic ad patriam.

17B. CORNWALL *v.* HACCUMBE.[3]

Deux hommes et lour femmes cum du dreit lour femmes porterent lour bref de garde vers B., qe fut gardeyn de fet, et diseynt qe la garde a eux apent du corps et de l'heir Robert fit [4] Roger, par la reson qe le pere l'enfaunt tint de eux certeynz terres par services qe [5] dounent garde et morust en lour homage, et issint a eux etc.

Herle. Nous avoms la garde du lees Pieres Corbet e ly vouchoms a garaunt par eyde de ceste court.

Pass. Voucher ne duez qe [6] nous voloms averer q'il n'avoit unqes estat en les tenemenz en demene n'en service et qe vous fustes le primer qe entrates après la mort l'auncestre l'enfaunt.

Toud. Nous sumes en cas de Statut, qe en bref de dreit si le tenant voille averer, *ut prius.*

Et cely qe fut vouché vynt et se joynt et dit qe l'auncestre l'enfant tynt de ly et de ses auncestres par priorité de feffement.

Et fut receu.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 35d, Dev.

Stephen de Haccumbe in mercy for divers defaults.

Stephen and Ismania, wife that was of John de Chevereston, William de Chevereston, and Thomas Haghewelle were summoned to answer William, son of Walter de Cornubia and Isolda his wife, Roger de Percy and Joan his wife, of a plea that they render to them John, son and heir of John of Chevereston, whose wardship belongs to the said William, Isolda, Roger and Joan, for that John de Chevereston held his land of them by knight's service. William and Isolda by their attorney, and Roger and Joan by his [7] guardian (*per custodem suum*), say that, whereas John of Chevereston, father of the said heir, had held of them in the right of Isolda

[1] abatist' *B*; abatist *L.* [2] P. pres en court a *L.* [3] Text from *R.*
[4] *Sic R.* [5] *Om.* qe *R.* [6] qi *R.* [7] Or 'her' or 'their.'

you were the first to abate into the wardship after our tenant's death. Judgment.

Passeley. See here is P. in court ready to enter into warranty and to warrant and to answer. Judgment, whether he should not be received.

Afterwards he was received.

Passeley [for the vouchee]. The infant's ancestors held of us by feoffment older than that by which they held of you and your ancestors. Ready etc.

Issue joined, and so to the country.

17B. CORNWALL *v.* HACCUMBE.[1]

Two men and their wives, as in right of the wives, brought their writ of ward against B., who was guardian *de facto*, and said that the wardship of the body of the heir of Robert Fitz Roger[2] belonged to them, because [the heir's] father held of them certain lands by services which give wardship, and died in their homage; and so [the wardship] belonged to them.

Herle. We have the wardship by the lease of Peter Corbet and vouch him to warrant by aid of this Court.

Passeley. You cannot vouch; for we will aver that [the vouchee] never had estate in the tenements, either in demesne or in service, and that you were the first to enter after the death of the heir's ancestor.

Toudeby. We are in the statutory case[3]; for in a writ of right if the tenant desires to aver—as aforesaid.[4]

The vouchee came and joined himself and said that the ancestor of the infant held of him and his ancestors by priority of feoffment.

He was received.

Note from the Record (*coutinued*).

and Joan a messuage and two carucates of land in Yedelton[5] by homage and fealty and the service of one knight's fee, to wit, forty shillings to the King's scutage when it occurs (*acciderit*) at [the rate of] forty shillings, and so in proportion, and by doing suit to the court of William, Isolda, Roger and Joan at Portelemuth from three weeks to three weeks, and had died in

[1] This seems to be the same case as the last.

[2] A fancy name. See our note from the record.

[3] Stat. Westm. I. c. 40.

[4] An omission is to be suspected; a reader of the manuscript has observed this.

[5] Thurlestone, Chivelstone and West Portelmouth are in the extreme south of Devon. Yedelton appears to be Ilton.

Note from the Record (*continued*).

the homage and service of William, Isolda, Roger and Joan, and for that reason the wardship of the said heir belongs to them, Stephen, Ismania, and the others unlawfully deforce the wardship from them: damages, two hundred pounds.

And Stephen comes and the others come by their attorney, and Ismania, William of Chevereston, and Thomas say that they claim nothing in the wardship of the heir. And Stephen says that he has the wardship of the heir by the demise of Peter Corbet, who demised it to him until the lawful age [of the heir]; and he vouches to warranty Peter, to be summoned in the county of Salop.

And he [Peter] is present in court and warrants to him [Stephen] the

18. HAYE *v.* GYNES.

Bref chalengé.

(I.)[1] Un bref fut abatu en forme[2] après *prece parcium*. Le quel bref voleit 'Precipe etc. quod iuste etc. reddat etc. duo mesuagia et dimidium et duas acras terre et dimidiam.' Il[3] deust avoir dit 'medietatem.' Par qei etc. Cuius contrarium videbatur termino Sancte Trinitatis. {Et[4] pur ceo qe la ou primes met le gros, com mees ou acre de terre, si doit il dire 'et medietatem unius mesuagii vel unius acre' et ne pas *dimidium* nec *dimidiam*; mès s'il soyt nul gros devant de la nature de la demande, donqe doyt il dire le *dimidium* ou le *dimidiam* etc.}

(II.)[5] Un bref fut porté 'quod reddat duo mesuagia et di[midium].' Ou fut dit par *Berr.* q'il dut avoir dit 'duo mesuagia et medietatem unius mesuagii.' Et le bref se abati par *Berr. Scrop.* et *Hervi.* Mès 'quod reddat duas acras terre et di[midiam]' le bref est bon et de forme.

(III.)[6] Nota en un bref d'entree le bref voilleyt 'unum mesuagium et dimidium etc.'

Herle. Jugement du bref, qar fourme de la chauncellerie est 'unum mesuagium et medietatem unius mesuagii.'

Denom. Vous n'avendrez mye al bref abatre, qar nous avoms eu un *prece parcium*, et par taunt nostre bref affermé bon.

Hoc non obstante, le bref fuist abatu.

(IV.)[7] Nota q'en un bref de intrusion qe dist 'Precipe A quod etc.

[1] Text from *M*: compared with *L*, *P*. [2] par la forme *L*. [3] Qar ou le bref voloit dimid' il *P*. [4] The following from *L*, which omits the preceding sentence. [5] Text from *R*. [6] *Vulg.* p. 72. Text from *B*. [7] From *Y* (f. 89d).

Note from the Record (*continued*).

wardship of the heir, and, after defending tort and force, says that the wardship belongs to him, Peter, and not to William, son of Walter and Isolda his wife, Roger and Joan; for he says that John of Chevereston, the heir's father, and his ancestors held the manor of Thurleston, in the said county of Devon, of Peter and his ancestors by knight's service before [they held] the said tenements in Yedelton of William and Isolda, Roger and Joan, and the ancestors of Isolda and Joan, by the said knight's service, as William and Isolda, Roger and Joan say; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of Michaelmas.

18. HAYE *v.* GYNES.[1]

Use in writs of the words 'half' and 'moiety.'

(I.) A writ was abated for bad form after a *prece partium*. It said 'Command etc. that he justly etc. render two messuages and a half and two acres of land and a half,' whereas it ought to have said 'moiety.' Wherefore etc. But the contrary was seen in Trinity term. {The[2] reason is that where you first put a 'gross,' such as a messuage or an acre of land, there you ought to say 'and the moiety of a messuage'; but if there is no 'gross' of the same nature preceding, then you shall say 'half,' making that word of the proper gender.}

(II.) A writ was brought saying 'that he render two messuages and a half.' And Bereford, C.J. said that it ought to have said 'two messuages and a moiety of one messuage.' And the writ was abated by Bereford, Scrope and Stanton. But the writ would have been in good form if it had said 'two acres of land and a half.'

(III.) In a writ of entry were the words 'one messuage and a half.'

Herle. Judgment of the writ, for the form of the Chancery is 'one messuage and a moiety of one messuage.'

Denom. You shall not get to abate the writ, for we have had [a day] *prece partium*, and thereby our writ is affirmed.

Nevertheless the writ was abated.

(IV.) A writ of intrusion said 'Command A. that etc. he render

[1] We put together four notes of the same case.

[2] Only one book gives this explanation.

reddat B duo mesuagia et dimid[ium] et x. acras terre et dimid[iam],' *Pass.* demanda jugement de cestui bref, qe ceo n'est pas forme de la chauncelerie, einz ' duo mesuagia et medietatem unius mesuagii et x. acras terre et medietatem unius acre terre.'

Willuby. Autrefoiz preistes un *prece parcium* e issi affirmastes le bref bon. Jugement, si ore etc.

Hervy. Volez autre chose dire? Si agarde ceste court q'il preigne rien par sun bref, e vous a Dieu sanz jour, e il en la mercy par sa fause pleinte etc.

Et postea in termino S. Trinitatis proximo sequenti un A. porta sun bref d'entré *ad terminum qui preteriit* e demanda vij. mees e demi, issi: 'Precipe B. quod reddat A. vij. mesuagia et di[midium] cum pertinenciis.'

Scrop. Nous demandoms jugement de cestui bref, car forme de la chauncelerie est 'Precipe quod reddat vij. mesuagia et medietatem unius mesuagii.'

Bereford. N'avez autrefoiz eu la vewe, e volez ore chalanger la forme du bref? Dites autre chose, nous agardoms.

E pus r[espoundi] au bref e dit etc.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 89, Camb.

William de la Haye, by his attorney, demands against Margery, wife that was of Richard de Gynes de Eltesle, two messuages and a half, sixty and six acres of land and a half and one acre of meadow, with the appurtenances in Pappeworth Everard',[1] which he claims as his right and inheritance, and into which Margery has no entry save by (*per*) the intrusion which she and Richard, sometime her husband, made into the same after the death of Juliana, wife that was of John de Beth, who held them in dower of John de la Haye, by the assignment of Philip de Insula, cousin and one of the heirs of John de Beth, of whom Juliana held them in dower by the gift of John de Beth, sometime her husband, and which after the death of Juliana

19. ANON.[2]

Waust porté vers gardein de fet, et le bref agardé bon; quod mirum: quere.

Un homme porta bref de waust etc.

[1] Mod. Papworth Everard. [2] *Vulg.* p. 72. Text from *B.*

to B. two messuages and a half and ten acres of land and a half.' And *Passeley* demanded judgment of this writ, for this is not the form of the Chancery: it should be 'two messuages and a moiety of one messuage and ten acres of land and a moiety of one acre of land.'

Willoughby. On another occasion you took [a day] *prece partium*, and so you affirmed the writ good. Judgment, whether now etc.

Stanton, J. Have you anything else to say? This Court awards that [the demandant] take nothing by his writ, and that [the tenant] take farewell without day, and that [the demandant] be in mercy for his false plaint.

Afterwards in the next Trinity term [1] one A. brought his writ of entry *ad terminum qui praeteriit* and demanded seven messuages and a half, thus: 'Command B. that he render to A. seven messuages and a half with the appurtenances.'

Scrope. We demand judgment of this writ, for the form of the Chancery is 'Command that he render seven messuages and a moiety of one messuage.'

Bereford, C.J. Have you not already had a view, and would you challenge the form of the writ? Say something else: we award it.

Afterwards he answered and said etc.

Note from the Record (*continued*).

ought to revert to William, son and heir of John de la Haye, by the form of the said assignment.

Margery, by her attorney, says that she ought not to answer him thereof to this writ; for she says that, whereas in the writ is inserted 'that Margery render to him two messuages and a half etc.,' the form (*modus*) of the chancery is in writs of this kind to insert 'two messuages and a moiety of a messuage etc.'; and therefore she demands judgment of the form of the writ.

And William cannot deny this. Therefore it is awarded that Margery go thence without day, and that William take nothing by his writ, but be in mercy for his false claim.

19. ANON.[2]

An action of waste lies against the lessee of a wardship, though he may thus be exposed to two actions.

A man brought a writ of waste etc.

[1] This will come before us on another occasion. See below, p. 184.

[2] The record has not been found. Only one book gives this report. Others only give the note that follows. Various annotators question the decision.

Herle. Nous ne clamoms rien mesqe a terme des aunz du lees un W., qe nous lessa cele garde. Jugement du bref.

Hedon. Vous estes tenaunt des tenemenz et avyet fait waust. Pur quey n'averoms mye nostre actioune vers vous ?

Ber. Si bref de droit de garde fuist porté vers vous, vous ne r[espondrie]z vous mye [1] (*quasi diceret sic*) ? Pur quey dounqe ne r[espondreit] yl a cestuy bref de trespas ?

Herle. S'yl recoverist damages vers nous ceo serroit graunt duresce, qar autrefoiz averoit nostre lessour actioune vers nous par bref de covenaunt, et issint serroms deux foithes puny pur un trespas, qe serroit inconvenyent de ley.

Non obstantibus racionibus predictis, fuist le bref agardé bon.

Herle. Qaunt a les mesouns, les mesons furent febles et veillez et issint chayesent, et nous ne fumes pas de poer de les relever. Prest etc. Et qaunt au gardyn, nul waust etc., et issint qaunt au boys etc.

{Un [2] bref de wast fut agardé vers gardein de fet, non obstante la duresse qe fut assigné [3] qe le gardeyn de dreit rec[overeit] vers lui damages par bref de covenaunt, et sic duplex pena et una transgressio [4] erga diversas personas, quod videtur inconveniens.}

20. BARDENAY *v.* DANBY.[5]

Forme de doun en le *descendere.*

Si le tenaunt en bref de forme de doun mette avaunt le fet le demaundant en le *descendere*, le quel fet testmoigne q'il eit relessé et quiteclamé, c'est bon respons a dire qe son auncestre fut en vie en temps de la confection de ceo fet [6] ou après etc., non obstante q'il ad un dreit taillé vivaunt son auncestre secundum oppinionem aliquorum.[7]

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 153, York.

John, son of Thomas (*sic*) de Bardenay, by Henry de Scurveton his attorney, demands against Thomas de Daneby super Wyske a messuage in Great Daneby super Wyske, and against William de Moubray and Agnes his wife seven acres of land in the said vill, and against William Naclerk de Langeton three acres of land in the same vill, which William Gaynoun

[1] *Sic B.* [2] Text from *M*: compared with *L*, *P.* [3] *Om.* qe fut assigne *L.* [4] pro una transgressione *P. Om. the residue L.* [5] Text from *M*: compared with *L*, *P.* [6] en tens du reles fet *P.* [7] que son auncestre fut seisi en temps de la confection et apres etc. *L.*

Herle. We claim nothing but for term of years by the lease of one W. who demised this wardship to us. Judgment of the writ.

Hedon. You are tenant of the tenements and have made waste. Why should we not have our action against you?

Bereford, C.J. If a writ of right of ward were brought against you, would you not have to answer? Yes, you would. Why, then, should [you] not answer to this writ of trespass?

Herle. If he recovered damages against us, that would be a great hardship, for afterwards our lessor might have an action against us by writ of covenant, and so we should be twice punished for one trespass, which is an absurdity in law.

Notwithstanding these arguments the writ was adjudged good.

Herle. As to the houses, they were old and weak and tumbled down, and we were unable to restore them. Ready etc. As to the garden, no waste etc.; and so as to the wood.

{A writ of waste was upheld against a guardian *de facto*, notwithstanding the argument from the hardship that the guardian *de iure* might recover damages from him by writ of covenant, and so double punishment for one trespass as regards different persons, which seems absurd.}

20. BARDENAY *v.* DANBY.[1]

The heir apparent in tail has no right that he can release.

If the tenant in a writ of formedon in the descender produces a deed of the demandant witnessing a release and quitclaim, it is a good reply to say that the ancestor of [the demandant] was alive at or after the time when the deed was made, notwithstanding that according to the opinion of some the demandant [heir apparent in tail] had a 'tailed' right while his ancestor was alive.

Note from the Record (*continued*).

gave to Ralph de Bardenay and Agnes his wife and the heirs of their bodies issuing, and which after the death of Ralph and Agnes his wife ought to descend to John [the demandant], son and heir of Ralph and Agnes, by the form of the gift. John says that William Gaynoun was seised thereof and gave the tenements to Ralph and Agnes, to hold in the form aforesaid; and that by this gift Ralph and Agnes were seised in time of peace, in the time of Edward I., taking esplees to the value etc.; and that the same [ought to descend to him by the form of the gift]. (*Note continued on next page.*)

[1] Proper names from the record.

Note from the Record (*continued*).

Thomas and the others come by Simon of Alverton, their attorney, and defend his [John's] right when etc. And William de Moubray and Agnes, as to the tenements demanded against them, say that they ought not to answer him thereof to this writ; for they say that the tenements were long ago in the seisin of one Alan Baudewyne, the first husband of Agnes, who held the same by a service certain in socage, and thereof died seised in his demesne as of fee; and that to him there succeeded in the same Elizabeth and Katerina as daughters and heirs, who now are in the wardship of William de Moubray and Agnes, mother of the said heirs, by reason of nurture etc.; and so they say that they [William and Agnes] have nothing and claim nothing in the tenements, except by way of wardship, as aforesaid; and they demand judgment of the writ.

And John cannot deny this. Therefore it is awarded that William de Moubray and Agnes go thence without day, and that John take nothing by this writ, but be in mercy for his false claim.

And Thomas, as to the tenements demanded against him, says that John can claim no right in the same; for he says that, the tenements being in Thomas's seisin, John by his writing granted, remised, released, and altogether, for himself and his heirs, quitclaimed to Thomas, his heirs and

21. ANON.[1]

Comune de pasture.

Si un homme eit comune de pasture et trove les avers[2] estraunge pessaunt sa comune etc., il purra fere bone avowerie sanz ses comuners[3] pur damage fessaunt en sa comune et qaunt a celui a qi les avers sount en son severale.[4]

22A. CHOCH *v.* ESTDENE.[5]

Une femme porta son bref de dower vers celui qe fut einz par statut merchaunt, et[6] dit coment il fut entré[7] et voucha a garraunt et fut receu.[8]

Une femme porta bref de dower etc.

Pass. A. de C. etc. se obliga par statut de marchaunt a nous en une summe d'argent. Par quey nous rec[overames] les tenemenz a

[1] Text from *M*: compared with *P*, *L*. [2] *Ins.* de un *L*, *P*. [3] *Ins.* cum *L*, *P*. [4] comune et en son several qaunt a ceux avers qe sount prises *L*. [5] *Vulg.* p. 72. Text of this version from *B*. Our headnote represents all that is found in *M*, *P*, *L*. [6] que *L*. [7] *Ins.* et fut chace a respoundre *L*. [8] garraunt le heir a qi la reversion apendoit apres son terme *L*.

Note from the Record (*continued*).

assigns, all right that he had or could have in a toft and croft in the said vill; and he produces that writing under the name of John, and it witnesses this; and he says that the tenements demanded against him are contained in the said writing; and thereof he prays judgment.

John says that the writing ought not to hurt him in this behalf; for he says that at the time of the making thereof Ralph and Agnes his wife were surviving and in full life.

Thomas says that John made the said writing long after the death of Ralph and Agnes his wife, the tenements being in his [Thomas's] seisin as aforesaid; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of Michaelmas.

William Naclerk, as to the tenements demanded against him, says that John can claim no right in them by any form of donation by William Gaynoun; for he says that William gave them to Agnes, wife of Ralph, while she was sole and long before she espoused Ralph, to hold to her and her heirs in fee simple, and not to Ralph and Agnes in fee tail, as John by his writ supposes; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the said term [the octave of Michaelmas].

21. ANON.

Avowry by a commoner upon a stranger.

If a man has common of pasture and finds the beasts of a stranger depasturing his common etc., he can make avowry for *damage feasant* in the common without his [fellow] commoners; and his avowry is 'in his several' as against the owner of the beasts.

22A. CHOCH *v.* ESTDENE.[1]

A tenant by statute merchant may be made tenant in an action of dower. He can vouch the creditor, and therefore cannot pray aid of him.

A woman brought a writ of dower etc.

Passeley. A. of C. obliged himself to us by statute merchant for a sum of money, and by virtue thereof we recovered the land to

[1] Proper names from the record.

tenir etc. si la qe la dette soit levé. Jugement, si cestuy bref vers nous i gise.

Denom. Vous estes tenaunt de fraunctenement, vers qi nous porteroms nous nostre bref.

Pass. Si nous voilloms rendre, la court ne soeffreit mye etc. Et d'autrepart, sy ele recoverist, ele rec[overeit] plus haut estat qe nous ne avoms mesmes, qar nous ne tenoms sy noun en noun de fraunctenement a terme des aunz sy la qe la dette soit levé; qe put estre qe cestuy C. est enprisoné; et, tout fuist il somonz, il ne poeit venir a respoundre. Par quey etc.[1]

22B. CHOCH *v.* ESTDENE.[2]

Une femme porta son bref de dower vers un A., qe vint en court et dit q'il n'avoit en les tenemenz si noun par vertue du statut marchant, et cesti bref git naturement vers cely q'est tenant de franc tenement. Jugement.

Scrop. Asset estes tenant de franc tenement qaunt[3] a r[espondre] a cesti bref, qar si vous fusset osté vous useriez l'assise. Jugement.

A. dit q'il n'avoit en les tenemenz rien si noun par un R. qe se obliga a ly en statut marchant, sanz qy il ne put respondre. Et pria eyde de ly.

Scrop. Eyde ne devez avoir, qar vous poet voucher de[4] vostre estat par reson de revercion etc.

Par qey fust osté de l'eyde, et il voucha de son estat, et fut receu.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 153, Berk.

Maud, wife that was of Hugh Choch, by William de Merston her attorney, demands against William de Estdene and Robert de Estdene the third part of sixty acres of land, of three acres of meadow, of twelve shillingworths of rent, and of the third part of a messuage in Westwitenham[5] as her dower.

William and Robert, by William de Northwyk their attorney, come and say that the tenements formerly were in the seisin of one Robert de Fuleham; and that he, before John le Blund, late mayor of London, and Henry de Leyc[estre], the King's clerk to accept recognisances of debt at London, confessed (*recognovit*) himself to owe to them, William and Robert

[1] *In the margin stands* pendet. [2] Text of this version from *R*: compared with *S*, *T*. [3] *Om.* de . . . qaunt *S*, *T*. [4] en *S*, *T*. [5] Mod. Wittenham, near Wallingford.

hold until the debt be levied. Judgment, whether this writ lies against us.

Denom. You are tenant of the freehold and against you as such we shall bring our writ.

Passeley. If we wished to render, the Court would not suffer it. Besides, if she recovered, she would recover a higher estate than we ourselves have, for we hold only for a term of years until the debt be paid, though in the name of freehold. Also it may be that [our creditor] is imprisoned, and, if he were summoned, could not answer. Wherefore etc.[1]

22B. CHOCH *v.* ESTDENE.

A woman brought her writ of dower against one A. He came into court and said that he had nothing in the tenements except by virtue of a statute merchant, and that this writ by its very nature lies against the tenant of the freehold.

Scrope. You are tenant of the freehold enough to answer to this writ, for if you were ejected you would use the assize. Judgment.

A. said that he had nothing in the tenements, save by one R., who bound himself to him in a statute merchant, and that without [R.] he could not answer; and he prayed aid of him.

Scrope. Aid you ought not to have, for you could vouch for your estate by reason of the reversion [in the obligor].

So he was ousted from the aid, and he vouched for his estate, and [the voucher] was allowed.

Note from the Record (*continued*).

de Estdene, thirty-one pounds, to be paid at certain terms already past; and that by virtue of this recognisance they sued the King's writ to the sheriff of Berks to have the lands and tenements of Robert de Fuleham delivered etc.; and the sheriff by virtue (*pretextu*) of this precept [delivered] the said tenements to William and Robert de Estdene, to hold as free tenement according to the form of the statute etc. until they should have levied thence the said debt together with the damages etc.; and thereof William and Robert of Estdene in form aforesaid vouch to warrant Robert de Fuleham.

Let them have him here on the morrow of St. John Baptist at the prayer of the demandant etc. by aid of the court; and be he summoned in the county of Berks.

[1] In the book that gives this version is a note to the effect that the case is pending. The following report takes us further.

23. ANON.[1]

Forma donacionis en le *descendere*.

Un enfaunt deinz age par son gardein porta son bref de forme de doun en le *descendere*. Ou le tenaunt dit q'il ne deust a tiel maniere de bref estre r[espondu] dedeinz age. Et ne fut pas allowé. Mes la [2] partie ne demorra mye sur son chalenge taunt q'il fut ousté par agarde, mès tendi de averrer qe le doun se fit en fee simple. Et l'autre e contra.

Note from the Record.

De Banco Roll, Easter, 3 Edward II. (No. 181), r. 186d, Linc.

William son of Walter, by his attorney, demands against Simon, son of William de Weynflet, and Maud his wife, one acre and a half of land in Weynflet, which Guy son of Simon gave to Hugh, son of Robert, and Hawisia his wife and the heirs of the bodies of the same Robert (*sic*) and Hawisia issuing, and which after the death of the said Hugh (*sic*) and Hawisia, and of Alice, daughter of the said Hugh and Hawisia, and of Walter, son of Alice, ought to descend to William, son of the said Walter, and cousin and heir of the said Alice, by the form of the said gift.

Simon and Maud, by their attorney, come and say that they ought not to answer him thereof to this writ, for that, since William son of Walter

24. ANON.[3]

Un homme fuist ajuggé a la prisoun de trespas fet en temps d'aultre Roy etc.

Un homme porta son bref de trespas de baterye etc. en temps le Roy qe mort est. En qi temps les parties plederent al pays qe de rien coupable. Avaunt qe l'enqueste pass,[4] le Roy morust. Après qi mort la resumounce fut suwy etc., ou trové fut ceste terme qe la partie defendaunt fut coupable al damage de pleintif de xl. marcs,[5] et les trespassours agardez a la prisone. Et sic nota qe homme fut agardé a la prisone pur trespas fet en temps d'autri Roy,[6] pur ceo q'il avoient en tiel temps pledé etc.[7], qar autrement il ne [8] eussent ewe la penance.[9]

[1] Text from *M*: compared with *P*. [2] alowe ne la *P*. [3] *Vulg.* p. 69. Text from *M*: compared with *B*, *L*, *P*. [4] passa *P*; lenqueste passe *B*. [5] xl. s. *B*. [6] *Ins.* et hec est causa *P*. [7] il aveyent pledie a issue de plee en temps lautre Roy *B*; *sim. L*. [8] *Om.* ne *M*; *ins. P*. [9] neussent yl mye este emprisonee *B*.

23. ANON.

Formedon in the descender. Demurrer of the parole.

An infant within age brought by his guardian a writ of formedon in the descender. The tenant said that [the demandant] ought not to be answered to such a writ while he was under age. This challenge was not allowed. However [the tenant] did not demur upon his challenge until he was ousted from it by judgment, but tendered to aver that the gift was made in fee simple. Issue joined.

Note from the Record (*continued*).

by his writ supposes that Guy gave the tenements to Hugh, son of Robert, and Hawisia his wife, and the heirs of the same Robert and Hawisia issuing, the said writ is vicious; and they pray judgment of the writ.

William cannot deny this. Therefore it is awarded that Simon and Maud go thence without day, and that William take nothing by his writ, but be in mercy for his false claim. But he is pardoned (*condonatur*) by the justices, for he is under age, etc.

The recorded case resembles the reported case in one respect, namely that in an action of formedon in the descender brought by an infant it is not adjudged that the parole shall demur. But as regards the issue, the record and the report are discrepant.

24. ANON.

For a trespass a man cannot as a general rule be imprisoned if in the meantime the King has died.

A man brought his writ of trespass for battery etc. in the time of the late King. In that time the parties pleaded to the country on 'Not guilty.' Before the inquest was taken the King died. After his death the resummons was sued etc., and in this term it was found that the defendants were guilty, to the plaintiff's damage forty marks, and the trespassers were adjudged to prison. And so note that they were adjudged to prison for a trespass done in the time of another king, for in that time they had pleaded [to the issue of the plea]. Otherwise they would not have been punished.[1]

[1] This seems a relic of the notion that the king's peace dies with him.

25. COPPER *v.* GEDERINGS.

Cessavit porté de cesser en temps soun auncestre.

(I.)[1] Un Aleyn porta le *cessavit per biennium* del cesser in temps soun auncestre.

Herle. Il ad counté del cesser en tens soun auncestre, le quel cesser n'apent pas al heir a chalenger. Jugement, si de cel cesser puise il actioun avoir.

Heydon. Statut nous doune ceo bref qe dit 'fiant brevia de ingressu heredi petenti super heredem tenentis et super eos quibus alienatum fuerit huiusmodi tenementum.' Jugement, si nous ne devoms a cesti bref estre respoundu.

Ber. Si le tenaunt vient en court et tend lez arr[ierages], vous ne les puissez pas receyvre. Et statut doune qe s'il vent avaunt jugement rendu et tende les arr[ierages], q'il serra receu et salvera sa tenaunce. Par quei depuis qe vous ne poez receyvre lez arr[ierages] qe sount cause de vostre actioun, vous n'averez pas le recoveryr sur le cesser.[2] (Par quei fut agardé q'il ne prist rien par soun bref.[3])

(II.)[4] Un *cessavit* fut porté vers B.

Herle. Vous veet bien coment il port son bref et ad foundu sa actioun sur un cesser fet en temps son auncestre etc. Par qey nous demandoms jugement si de cesser fet en autri temps pusse il actioun avoir.

Berr. La cause de vostre actioun si est les arrieres les queux vous ne poet recoverer ne pur eux destresce avower. Par qey etc.

Hervi. Pur ceo qe vous avez porté bref de cesser qe vous dorreit poynt cause a destreindre si les tenemenz furent overts a la destresce, si agarde ceste court qe vous ne preignez rien par vostre bref etc.

(III.)[5] Homme ne recovera mye par le *cessavit per biennium* par le cesser de services en temps l'auncestre le demandaunt,[6] nent plus qe homme[7] freit bone avowerie pur arr[ierages] des services[8] en temps son auncestre, par *Ber.*, mès soyt seisi et pus se purchasse si son[9] tenaunt eit cessé,[10] non obstante Statuto quod dicit 'fiat breve heredi

[1] *Vulg.* p. 74. Text from *P*: compared with *B*. [2] ne poetz aver actioun a les arr[ierages] il pert qe vous ne poietz par le cesser launcestre demaunder les tenemenz en demene *B*. [3] Et lautre a dieu saunz jour etc. *B*. [4] Text from *R*. [5] Text from *M*: compared with *L*, *P*. In *P* are two versions of this note. [6] en temps le Roy *L*. [7] *Ins.* ne *L*. [8] *Ins.* encorus *L*. [9] auncestre, mes soit seisi par Ber. et pus de purchaz si mon *M*; *sim. P*. [10] *Ins.* etc. *P*.

25. COPPER *v.* GEDERINGS.[1]

The heir shall not have a *cessavit* for a cesser in the time of his ancestor.

(I.) One Alan brought the *cessavit per biennium* for a cesser in the time of his ancestor.

Herle. He has counted on a cesser in the time of his ancestor, and on that cesser the heir cannot found a claim. Judgment, whether for such a cesser he can have an action.

Hedon. Statute gives us this writ, for it says 'be writs of entry made for the demanding heir against the heir of the tenant and against those to whom the tenement is alienated.'[2] Judgment, whether we ought not to be answered to this writ.

Bereford, C.J. If the tenant came into court and tendered the arrears, you could not receive them.[3] And the statute concedes that if the tenant comes before judgment rendered and tenders the arrears, he shall be received and save his tenancy. Therefore, since you cannot receive the arrears, which you make your cause of action, you cannot have a recovery [of the land in demesne] by reason of the cesser. (Therefore it was awarded that he took nothing by his writ.)

(II.) A *cessavit* was brought against B.

Herle. You see how he brings his writ and founds his action on a cesser in the time of his ancestor etc. We pray judgment whether for a cesser that was made in another's time he can have action.

Bereford, C.J. The cause of this action is the arrears, which you cannot recover and for which you cannot distrain.

Stanton, J. Forasmuch as you have brought your writ on a cesser which would not give you cause to distrain if the tenements were open to distress, this Court awards that you take nothing by your writ etc.

(III.) A man cannot recover in the *cessavit per biennium* for a cesser of services in the time of the demandant's ancestor, no more than he can make a good avowry for arrears of service incurred in the time of his ancestor, but he must first obtain seisin and then, if the tenant has ceased his services, purchase a writ:[4] per Bereford, C.J.; and this, notwithstanding the Statute says 'be a writ made for the demanding

[1] We put together three reports of one case. See our note from the record.

[2] Stat. Westm. II. c. 21.

[3] Because the arrears should go to the executor.

[4] At this point the text is not satisfactory.

petentis[1] super heredem tenentis vel super eos quibus tenementum fuerit alienatum.'[2] Set statutum potest intelligi ubi tenens non sit attornatus heredi petentis de aliquo et cessat de servicio tempore heredis, et non tempore antecessoris: in quo casu breve dicet 'que tenet de A. patre vel matre vel avo antecessoris': et est breve de ingressu.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 190d, Linc.

Adam le Coppere de Hedenaston demands against Basilia Gederingges and William her younger son a messuage in Torkeseye, and against Basilia Gederingges de Torkeseye and Robert her son a toft in the same vill as his right and inheritance, and into which Basilia, William, Basilia and Robert have no entry unless by (*per*) Robert Gederingges, who held them by certain services of Walter of Hedenaston, cousin of [the demandant], whose heir he is, and which [tenements] ought to revert to [the demandant] by the

26. ANON.[3]

Attornement sur une fin.

La reversioun de tenemenz qe une femme tynt en dower fut granté. La quele femme vint en court le jour de la conisaunce et dit q'ele fut prest de attorner a celui a qi la reversioun de sa tenance fut granté. Ou[4] fut dit par *Berr.* q'ele attentesist[5] tauntqe la note fut escript et fet, en supposaunt[6] qaunt la note fut fet q'ele serreit receu a attorner, *non obstante* q'ele n'est pas venu en court par le *quid iuris clamat* etc.

27A. STIRKELAND *v.* BRUNOLFSHEAD.[7]

Entré sur statut de Gloucestre de alienacion de tenemenz a terme de vie cassatur quia non war[antizatur] per statutum.

A. porta bref d'entré vers B. de un mees et de une carué de terre, in que non habuit ingressum nisi per C. qe les tenemenz tient a terme de vie, et le bref dit 'qui illud alienavit contra formam statuti Gloucestrie.'

[1] petenti *P*, *L*. [2] *Om.* the residue *L*. [3] Text from *M*; compared with *P*.
[4] et *P*. [5] attendesit *P*. [6] *Ins.* qe *P*. [7] Text from *S*: compared with *T*.

heir against the heir of the tenant or against those to whom the tenement was alienated.' For the Statute may be understood of a case in which the tenant has not attorned for anything to the heir and ceases the service in the heir's time and not in the time of the ancestor: and in that case the writ shall say 'which he holds of A., father, mother or grandfather of [the demandant]': and it is a writ of entry.[1]

Note from the Record (*continued*).

form of the statute provided by the common counsel of the King's realm, since Basilia, William, Basilia and Robert have already for two years ceased in doing the said services to the said Walter etc.

And thereupon Adam prays licence to withdraw from his writ. And he has it.

It seems probable that this is the reported case, and that the reports are incorrect in so far as they suppose that judgment was given against the plaintiff.

26. ANON.

Attornment upon a fine.

The reversion of tenements that a woman held in dower was granted. She came into court on the day of the conusance, and said that she was ready to attorn to him to whom the reversion of her tenancy was granted. And it was said by Bereford, C.J., that she should wait until the note [of the fine] was written and made, implying that when the note was made she would be received to attorn, although she had not come into court by the *quid iuris clamat*.

27A. STIRKELAND *v.* BRUNOLFSHEAD.[2]

When tenant for life or tenant by the curtesy alienates in fee, the reversioner may at once have a writ to recover the land; but it must not purport to be founded on the Statute of Gloucester.

A. brought a writ of entry against B. for a messuage and a carucate of land 'into which he had no entry, except by C., who held the tenements for term of life'; and the writ said that he had alienated them 'against the form of the Statute of Gloucester.'

[1] The difficulty was to find a case to which the words in the Statute expressly giving an action of *cessavit* to the heir could be applied without infringing general principles. See Sec. Inst. 402.

[2] This case is Fitz. *Entre* 8. Proper names from the record.

Denom. Jugement de cesti bref qe suppose le alienacion fet encountre le statut de Gloucestre, et le statut ne fet mencion forsqe de tenemenz en douwer.

Kyng. Par statut de West[moustier] Secunde in simili casu simili remedio etc. Dont depuis qe tenant en dowere et tenant a terme de vie sunt de semble [1] estat, il semble qe le bref est bone.

Denom. ut prius.

Ing. Nous avoms par statut quod concordant [2] clerici in cancellaria in simili casu. Dount de puis qe ceti bref nous est doné en la chauncellerie il semble qe le bref est bone.

Berr. De puis qe vous supposez par vostre bref q'il est foundue sur statut de G[loucestre], et statut ne fet pas mencion en tiel cas, si agarde la curt qe vous ne preyngnez rien par vostre bref. Et alii etc.[3]

27B. STIRKELAND *v.* BRUNOLFSHEAD.[4]

Un homme porta son bref fondu sur statut de Gloucestre pur l'alienacioun fet par celui qe tynt par la ley d'Engleterre. Et pur ceo qe le bref voleit 'contra formam statuti etc.,' ou statut ne fut garraunt fors la ou [5] femme qe tent en dowere [6] aliene etc.[7] si fut le bref abatu par *Berr.* Mès homme soleit recoverer auxi bien par l'alienacioun le tenaunt par la ley d'Engleterre com si femme qe tynt en dowere aliene etc. Et hoc probavit *Ing.*[8] per talem rationem:— A la [9] comune ley homme ne purra en semblable cas bref avoir. Mès statut veot 'quod in simili casu simile remedium indigenti etc.' Et del hure qe l'estat [10] par la ley d'Engleterre est semblable a [11] femme qe tynt en dowere, par reson de qi alienacioun recoverer est doné, et c'est par statut, eadem racione ubi tenens per legem Anglie etc. Et hoc non obstante, breve fuit cassatum.[12] Et est breve nunc ordinatum etc. 'que ad ipsum reverti debent per formam statuti in consimili casu inde provisi etc.'

[1] *Sic S, T.* [2] *Sic S, T.* [3] *Sic S, T.* [4] Text from *M*: compared with *L, P.* [5] ne parle forqe de *L.* [6] *Ins.* et *L.* [7] en fee *L.* [8] Yngham *P.* [9] abatu par Ber. non obstante qe a la *L.* [10] *Ins.* al tenant *P.* [11] *Ins.* lestat la *P*; *sim. L.* [12] *Om.* the residue *L.*

Denom. Judgment of this writ, for it supposes that the alienation was made against the Statute of Gloucester,[1] and the Statute only mentions the case of tenant in dower.

[*Ingham*]. By the Statute of Westminster II.[2] 'in a like case demanding like remedy' [a writ is to be granted]. So, since tenant in dower and tenant for life are of like estate, it seems that the writ is good.

Denom repeated his argument.

Ingham. We have it by Statute that in like case the clerks in the Chancery shall agree upon a writ.[3] So, since this writ is given to us in the Chancery, it seems to be good.

Bereford, C.J. As you suppose by your writ that it is founded on the Statute of Gloucester, and that Statute makes no mention of this case, the Court awards that you take nothing by your writ, and that the others [go without day].

27b. STIRKELAND *v.* BRUNOLFSHEAD.

A man brought his writ founded on the Statute of Gloucester for an alienation made by one who held by the curtesy. And because the writ ran 'against the form of the Statute' etc., whereas the Statute is warrant for the writ only when there is alienation by a doweress, the writ was abated by Bereford, C.J. Still it has been usual for men to recover as well upon the alienation by a tenant by the curtesy as upon that by a tenant in dower, and *Ingham* proved [that] this [is right] by the following reasoning:—At the common law a man could not have such a writ. But a Statute provides that 'in like case demanding like remedy' [a writ be made]. And, since the estate by the curtesy is like that of tenant in dower, and a recovery by reason of her alienation is granted by Statute, so by the same reason, where tenant by the curtesy [alienates, the reversioner can recover]. Notwithstanding this, however, the writ was quashed. And now a writ is ordained which says 'and which [tenements] should return to him by the form of the Statute provided for a similar case' etc.

[1] Stat. Glouc. c. 7. [2] Stat. Westm. II. c. 24.
[3] Stat. Westm. II. c. 24.

27c. STIRKELAND *v.* BRUNOLFSHEAD.[1]

Un A. porta son bref vers B. en les quex etc. si noun par William Howerde jadiz baroun mesme ceste A., a qy ele en sa vie ne pout countredire et encountre forme de statut ad aliené.

Herle. Cesti bref est fundu sur statut de Gloucestre ou n'y ad nul estatut en ceo cas ordiné. Par qey nous demandoms jugement du bref etc.

Denum. Statut de Gloucestre veut qé la ou femme qe tent en dowere aliene en fee, qe cely a qy la reversioun est eyt meyntenant son recoverer etc. Par mesme la reson si grante la chauncellerie si homme qe tient par ley d'Engleterre ou a terme de vie [2] aliene en fee, q'il avera son recoverer par la force du mesme le statut. Et ceu bref avoms nous tutditz eu et usé, et vous les avez meyntenuz. Et demandoms jugement etc.

Berr. Vous alleggez statut en cas, et les paroles de statut ne acordent mye a vostre cas, ou mestier serreit qe eux a vostre bref furent acordauntz.

Herle. Jugement du bref, qar il vouche a garrant statut de Gloucestre ou il n'est mye en cas de statut. Et qaunt homme allegge expressement le statut encontre [3] les paroles de statut acordent a son dit et ceo fount il poynt. Jugement.

Hervi. Pur ceo qe statut de Gloucestre n'accorde mye a vostre cas espressement, et vous la avez espressement vouché, si agarde ceste court que vous ne prengnez rienz par vostre bref.

{*Bere.*[4] Nul bref n'est meintenable hors la commune lei par forme de statut s'il ne soit moté *expresse* en le statut. Mès la ou vous dites 'concordent [5] clerici de cancellaria,' ceo est a entendre des brefs en estrange cas. Mès si ceste parole 'per formam' ne fust en vostre bref, vostre bref avereit colour de estre meintenu.

Et pus *Hervy* regarda le statut e dist: Volez altre chose dire a meintenir cestui bref?

[1] Text from *R.* There is yet another version in *B.* See *Vulg.* p. 75. [2] *Ins.* et *R.* [3] *Corr.* covient qe (?). [4] This ending from *Y* (f. 91d). [5] concordant *Y.*

27c. STIRKELAND *v.* BRUNOLFSHEAD.

One A. brought his writ against one B. saying 'into which he has no entry save by William Howard, sometime A.'s husband, whom in his lifetime she could not contradict and who alienated against the form of the Statute etc.'

Herle. This writ is [professedly] founded on the Statute of Gloucester, whereas there is no Statute ordained for this case. So we demand judgment of the writ etc.

Denom. The Statute of Gloucester provides that, where a woman holding in dower alienates in fee, the reversioner shall at once have his recovery. For the same reason the Chancery grants that if a man holding by the curtesy or for life alienates in fee, [the reversioner] shall recover by the form of the said Statute. And this writ we have always had and used, and you [Sirs] have maintained it. We pray judgment etc.

Bereford, C.J. You allege a Statute for the case, and the words of the Statute do not accord with your case, whereas they and your writ should be accordant.

Herle. Judgment of the writ; for it vouches to warrant the Statute of Gloucester, and the case is not the statutory case; and when a man expressly alleges a Statute, the words of the Statute [ought to] agree with what he says, and that is not so here. Judgment.

Stanton, J. For that the Statute of Gloucester does not expressly accord with your case, and you have expressly vouched it, therefore this Court awards that you take nothing by your writ.[1]

{Bereford, C.J.[2] No writ is maintainable outside of the course of the common law [and] 'by the form of the Statute' unless it be expressly given by[3] the Statute. And as to what you say about 'let the clerks of the Chancery agree,' that is to be understood of writs in strange cases; but if your writ had not those words 'by the form of the Statute,' it would have some colour and might be maintainable.

Afterwards Stanton, J., looked at the Statute and said: Will you say anything else to maintain your writ?

[1] Yet a fourth version of this case is found in *Vulg.* p. 75 and the Maynard MS. In it counsel for the demandant says, 'We have seen that if tenant by the curtesy or for life alienated etc. [the reversioners] had recovery etc.'

[2] This end of the case from another book.

[3] Literally, 'worded in.'

Hengham. Sire, altre qe nous n'avoms dist.[1]

Hervi. Si agarde ceste court qe B. va quites de cestui bref, et A. en la mercy pur sa fauce pleinte etc.

Et pus le quart jour après fust le statut regardé en la presence *Bereforde*, *Barneby*, *Osegoddeby* e altres examinours de la chauncelerie; e amend[erent] le bref par ceste clause 'in consimili casu provisi etc.'

Vic. Ebor. salutem. Precipe Johanni de Stivetone et Amicie uxori quod iuste etc. reddant[2] Johanni le Flemyng unum mesuagium et tres bovatas terre cum pertinenciis in Lofthuis iuxta Harewode, que clamat esse ius et hereditatem etc., et in que iidem Johannes et Amicia non habent ingressum nisi post dimissionem quam Robertus le Flemyng, frater predicti Johannis, cuius heres ipse est, inde fecit Hamoni de Alta Ripa ad vitam ipsius Hamonis, et que post dimissionem per ipsum Hamonem Willelmo Hamiltone inde factam in feodo, ad prefatum Johannem le Flemyng reverti debent per formam statuti in casu consimili provisi, ut dicit, et unde queritur quod predicti etc. Teste me ipso apud W. tercio die Maii anno regni nostri iij°.}

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 136d, Westmor.

Walter de Stirkeland, by his attorney, demands against Roger de Brunolvesheved three messuages, thirty-six acres of land, and two acres of meadow in Stirkelandketel as his right and inheritance, and into which Roger has no entry unless after (*post*) the demise which William de Stirkeland, who held them by the curtesy after the death of Elizabeth sometime his (William's) wife, mother of Walter, whose heir [Walter] is, made thereof to Thomas de Kymbe and Agnes his wife, and which [tenements], after the demise made by William to Thomas and Agnes in fee against the form of the statute thereof provided by the common counsel of the King's realm ('contra formam statuti de communi consilio regni regis inde provisi'), ought to revert to Walter by the form of the said statute etc. (*Note continued on opposite page.*)

28. ANON.[3]

Nontenure.

Un A. demanda vers B. vj. acres de terre et vij. s. de rente.

[1] *Supply* ne pooms dire (?). [2] reddat *Y*. [3] Text from *M*: compared with *P*.

Ingham. We have nothing [to say] but what we have said.

Stanton, J. So this court awards that B. go quit of this writ, and that A. be in mercy for his false plaint etc.

Four days afterwards the Statute was considered in the presence of Bereford, C.J. [and] *Bardelby* and *Osgodby* and other examiners of the Chancery,[1] and they amended the writ by this clause: 'in like case provided.'

[Form of writ.][2] [The King] to the sheriff of Yorkshire, greeting. Command John de Stiveton and Amice his wife that justly etc. they render to John le Flemyng one messuage and three bovates of land with the appurtenances in Lofthouse next Harewood, which they claim to be their right and inheritance etc., and into which John and Amice have no entry, save after the demise which Robert le Flemyng, brother of [the demandant], whose heir he is, made to Hamo de Hauterive for the life of Hamo,[3] and which, after a demise made thereof by Hamo to William Hamilton in fee, ought to revert to [the demandant] by the form of the Statute provided in a like case (*in casu consimili*)—so he says—and whereof he complains that the said etc. Witness, myself, at W[estminster] on the third day of May in the third year of our reign.}

Note from the Record (*continued*).

Roger, by his attorney, comes; and heretofore he vouched therefor to warrant Agnes, wife that was of Thomas de Kymbe. And she now comes by summons and warrants to him, and defends his [the demandant's] right; and she says that she ought not to answer him therefor to his writ; for she says that, whereas he supposes by his writ that a statute of the King is provided upon which this writ is founded and cannot show any certain statute whereby the writ ought to be maintained, she demands judgment etc.

And Walter cannot deny this. Therefore it is awarded that Roger go thence without day, and that Walter take nothing by his writ, but be in mercy for his false claim.

28. ANON.

Nontenure. Recovery after writ purchased.

One A. demanded against B. six acres of land and seven shillingworths of rent.

[1] See the similar scene reported above, p. 19.

[2] This seems a model writ settled in conference between the chief justice and the masters in Chancery. Apparently it does not refer to the particular case in which the writ had been quashed.

[3] The alienor in this case is not a tenant by the curtesy.

Fris. Un A. est tenaunt de iij. s. de rente de sa demande. Jugement etc.

Toud. Tenant de l'entier le jour etc. Prest etc.

Fris. Nous ne pooms dedire, mès pus vostre bref purchacé les iij. s. de rente furent recoverez vers nous. Prest etc.

Ber. R[esponez] dount de ceo qe vous tenez etc.

29. LIVERMERE *v.* THORPE.[1]

Nuper obiit.

Robert de Livermer[2] porta son *nuper obiit* vers Johan de Thorpe,[3] et counta de la seisine Sarre.[4] De Sarre descendit a Margery. De Margery, pur ceo q'ele morust sanz heir de son corps etc., resorti le dreit et devoit resortir a Maude et a Margery com a cosignes et heirs W., pere Sarre, miere Margery. De Maude descendit linealment a Robert de Livermere, q'ore demande. De Margery descendit a Johan de Thorpe, q'ore tent etc.

Herle repeciit narracionem et discensum.[5] Q'il n'avoit unqes nul Maude cosigne W. Prest etc.

Et alii e contra.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 72d, Norf.

Robert de Lyvermere, by his attorney, demands against John de Thorpe a moiety of a moiety of the manors of Northcreyk and Hillington as his right and the reasonable part which falls to him of the inheritance of Sarra, wife that was of Roger son of Peter son of Osebert in Northcreik and Hillington, cousin (*consanguinee*) of Robert and John, whose heirs they are and who lately died (*nuper obiit*). Robert, by his attorney, says that Sarra the common ancestor was seised of the entire moiety of the tenements in her demesne as of fee and of right in time of peace, in the time of Edward [I.], taking thence esplees to the value etc.; and from her the right descended to one Margery as daughter and heir; and from her, since she died without an heir of her body (*de se*), the right resorted to Maud and Isabella (*sic*) as cousins and heirs, sisters of one Bartholomew father of Sarra, mother of Margery the daughter of Sarra; and from Maud the right of her purparty descended to one Thomas as son and heir, and from him to Robert, the demandant, as son and heir; and from Isabella the right of her

[1] Text from *M*: compared with *L*, *P*. [2] de L. *P*. [3] Tropp' *P*. [4] *Ins.* Tanny. *P*. [5] defensum et dit *P*.

Friskeney. One [X.] is tenant of three shillingworths of the rent demanded. Judgment etc.

Toudeby. Tenant of the whole on the day [of writ purchased]. Ready etc.

Friskeney. That we cannot deny; but since your writ was purchased the three shillingworths of rent were recovered against us.

Bereford, C.J. Answer then for as much as you hold etc.

29. LIVERMERE *v.* THORPE.[1]

Denial of the existence of a person through whom pedigree is traced.

Robert of Livermere brought his *nuper obiit* against one John of Thorpe and counted on the seisine of Sarah. From Sarah there was descent to Margery, and from Margery, since she died without an heir of her body, the right resorted and ought to resort to Maud and Margery as cousins and heirs of William, father of Sarah, mother of Margery. From Maud there was lineal descent to Robert, the demandant, and from Margery to John, the tenant etc.

Herle rehearsed the count and descent, and (said he) there never was any Maud cousin of W. Ready etc.

Issue joined.

Note from the Record (*continued*).

purparty descended to one Margery as daughter and heir, and from her to one Robert as son and heir, and from him to this John de Thorpe, who now holds the whole and deforces from him [the demandant] his reasonable part.

John, by his attorney, after formal defence, says that he ought not to answer to such a count to this writ; for he says that (whereas Robert de Lyvermere demands a moiety of the same tenements as his right and his reasonable part of the seisin of Sarra, and so descending to Margery as daughter and heir, and asserting that from Margery, since she died without an heir of her body, the right ought to resort to Maud and Margery (*sic*) as sisters of Bartholomew father of Sarra) the said Bartholomew had no sister Maud by name; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Michaelmas. It appears from the same roll that similar actions were pending between the demandant and Robert of Ufford and Cecily his wife, and between the demandant and Edmund of Pakenham and Roesia his wife.

[1] For the pedigree see our note from the record.

30A. GOUTEBY *v.* LATIMER.[1]

Nota que en un prise dez avers le pleyntif tendi d'averer la prise estre fete en sa comune appurtenaunt etc., ou l'avowerie fust fete sur un autre que sur cely que se pleynt: a qi le destreygnaunt dit q'il trova cez bestes en leu ou il avowa pessaunt la herbe et pernaunt lez profitz, et dit qe ceo est terre arable et nent sa comune: prest etc.

Un A. fuist somonz a respoundre a D. pur quey il avoyt pris ses avers.

Scrop. avowa etc., et par la resoun q'un T. tyent de A. par homage et feuté et par les services de vij. s. par an, des queux services il fuist seisi, et dount cel lieu est parcelle des tenemenz; et par taunt arriere si avowe il sour T. en soun fee etc.

Denom. Nous vous dyoms qe nous tenoms de lui en mesme la ville un mees et xxx. acres de terre par ceux services, a quey comune est appendant; et vous dyoms qe cel lieu ou il avowe est nostre comune de pasture aportinant etc. Jugement, si en nostre comune pur autri services puisse avowerie faire.

Herle. Nous vous dyoms qe cel lieu est terre gainable, et est partie des terres chargietz. Jugement etc. si nous ne puissoms avower.

Denom. A ceo vous dyoms qe cel lieu est un grant place qe l'em appele bresche[2]; et vous dyoms qe après le vj. an cel bresche gist fresche vj. aunz, et en cel temps est ceo nostre comune; et la prist il nos avers. Et s'il le veot dedire etc. prest etc.

Berr. Yl y ad un comune usage el counté de N. qe en temps qe lour comuns chaumps sount warrettez[3] par lour comun assent il fount une heche[4]; et ja tardés cel usage ne tout mye la comune. Auxint par cas yl y ad en cest pais.

Herle. Cele bresche n'est comune sy noun a ceux qe ount terre en cele bresche,[5] et vous dioms qe cestui A. n'ad nule terre en ceste bresche par quei il poeit avoir[6] comune etc. Issi nous ne[7] puist il de cest avower estraunger.

Hedon. Nostre comune apportenaunt a nostre frauncténement en mesme la ville. Prest etc.

Et alii econtra.

[1] *Vulg.* p. 68. Text from *B* (Hil.). As headnote we give all that appears in *L* (Pasch.). [2] bresch', *and so below*, *B*. [3] *Ins.* (*but expuncted for omission*) en lour comune par lour comune *B*. [4] *Sic B*, *the* che *over erasure*. [5] en cele bresche *over erasure B*. [6] il poeit avoir *over erasure B*. [7] issi *over erasure and* ne *of a later insertion B*.

30A. GOUTEBY *v.* LATIMER.[1]

In a replevin the plaintiff tendered to aver that the taking was made in his common appurtenant etc., where the avowry was made upon a person other than the plaintiff. The distrainor answered that he found the beasts in the place where he laid his avowry eating his herbage and taking the profits, and said that the place is arable land and not the plaintiff's common: ready etc.

One A. was summoned to answer D. for taking his beasts.

Scrope avowed for the reason that one T. holds of A. certain tenements, of which the *locus in quo* is parcel, by homage and fealty and the service of seven shillings a year, of which services he was seised; and for so much arrear he avows upon T. in his [A.'s] fee etc.

Denom. We tell you that we hold of him in the same vill by [certain] services a messuage and thirty acres to which common is appendant, and that this place is our common appurtenant etc.[2] Judgment, whether you can avow for a third person's services in our common.

Herle. We tell you that this place is cultivable land and part of the land charged [with T.'s services]. Judgment, whether we cannot avow.

Denom. In answer we say that this place is a great place which folk call a 'bresche'; and we say that after six years this 'bresche' lies fresh for six years, and in that time it is our common; and there he took our beasts. If he will deny it, ready etc.

Bereford, C.J.[3] In the county of N. there is a common usage that in the time when their common fields are fallow, by common consent a 'bresche' is made, and none the less this usage does not abolish the common. And so it may be in the country from which this case comes.

Herle. This 'bresche' is common only for those who have land in the 'bresche'; and we tell you that [the plaintiff] has no land there, by reason whereof he could have common. Judgment, whether he can estrange us from this avowry.

Hedon. Our common appurtenant to our freehold in the same vill. Ready etc.

Issue joined.

[1] Proper names from the record. As a headnote we give a short version contained in one of our books. The text of the other two reports is peculiarly difficult.

[2] There is no contrast between 'appendant' and 'appurtenant.'

[3] A corrector has tampered with the text of our only authority.

30B. GOUTEBY *v.* LATIMER.[1]

Un A. se pleint qe B. prist ses avers etc. B. avowa pur lui e pur J. sa femme sur un G. come sur lour tenant a terme de vie, par la r[eson] q'il tient de eux une bové de terre en C. par fealté e par les services de vj. deniers par an, e pur ceo qe la rente fut arere par ij. anz le jour de la prise, en teu leu com parcel de cele bové de terre etc.

A. dit qu'il tient de W. le Latimer un mies e xxx. acres de terre, a queux le lieu ou la prise fu fete est un commune appurtenant. E demanda jugement si en commune puisse avowerie faire. E issi commune, qe cele bové e altres bovez en mesme le lieu girrent waste par vj. anz de commun usage du temps qe les bleez soient siez etc., de deinz quel temps il fist la prise, e le setym an list a ceux qe deivent la terre lour terre gaigner etc. : prest etc.

B. vous dit qe cele terre est terre close e ouverte a la volenté G. son tenant, e il nel puet cum terre charger etc. Mès a ceo qe A. dit qe ceo est un commun, il dit talent, qar il dit qe les usages des veisins est par commune assent le terce an ou le quart an qe lour terres de ceu lieu gisent friesches com une commun a lour bestes dem[eines] sanz ceo qe nul ne pest la pasture, e issi a eux com several : prest etc.

A. qe cel lieu ou la prise fut fete est commun *ut supra* a moye a touz mes veisins de mesme la ville e nent several pur le temps : prest etc.

Et sic patria.

Ex hoc nota qe home puet avower destresses de altri bestes qe de sun tenant pur pasture en sun fee pur services arriere. Quidem apprentici[2] dixerunt illo die nent pur achape, einz pur garde fet etc.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 37, Not.

Thomas le Latymer and Henry del Hulle de Suthwhetle were summoned to answer Hugh de Gouteby de Suthleverton[3] of a plea why they together with John le Seriaunt de Cashale took Hugh's beasts and detained them against gage and pledge. The plaintiff says that on [30 June, 1309] Monday next after the feast of St. John Baptist in 2 Edw. II. in the vill of Suthleverton, in a place called Suthbrek, the defendants took eight oxen and four cows : damages, a hundred shillings. (*Note continued on opposite page.*)

[1] Text of this second version from Y (f. 169d) ascribed to Pasch. an. 3. [2] *Sic* Y. [3] Mod. South Leverton. Hard by is South Wheatley.

30B. GOUTEBY *v.* LATIMER.

One A. complains that B. took his beasts. B. avowed for himself and for J. his wife upon one G. as upon their tenant for life, by reason that he holds of them a bovate of land in C. by fealty and the services of six pence a year, and because the rent was arrear for two years on the day of the taking, [he took the beasts] in such a place as parcel of the bovate etc.

A. says that he holds of W. Latimer a messuage and thirty acres of land, to which the place where the taking was made is a common appurtenant. And he prayed judgment whether he can avow in the common. And it is common [said he] in this wise, that by common usage this bovate and other bovates in this place lie waste for six years after the corn has been cut (within which time the taking was made) and in the seventh year those who own[1] the land may till it. Ready etc.

B. tells you that this land is close or open at the will of G., his tenant, and he can[2] charge it as [arable] land etc. But whereas A. says that it is common, he speaks at random, for he [B.] says that the usage of the neighbours is that by their common assent their lands in this place lie fresh in the third or fourth year as a common for their own beasts so that no one [else] has pasture there; and so it is in effect their several. Ready etc.

A. says that the place where the taking was made is common (as above) for him and all his neighbours of the vill, and not several for the time. Ready etc.

And so [to] the country.

Upon this note that one can for services arrear avow a distress of the beasts of one who is not his tenant for pasturing in his fee. Some apprentices that day said: Not [if the beasts are there by way] of escape, only if there with ward made.[3]

Note from the Record (*continued*).

Thomas and Henry come, by Jacob de Muscote their attorney, and, after formal defence, deny that they took more than seven oxen. As to the seven oxen Thomas avows the taking in the names of himself and Lora his wife, for that one William le Louerd holds of them for the term of the life

[1] The *deivent* of the text seems to suggest the close relationship between *owe* and *own*.

[2] But the text seems to say 'cannot.'

[3] This seems to mean 'under custody.' The contrast is between beasts that have been put there and such as are there by accident.

Note from the Record (*continued*).

of Thomas and Lora a messuage and a bovate of land in Suthleverton by fealty and the service of seven shillings and nine pence a year and by doing suit to the court of Thomas and Lora at Suthleverton from three weeks to three weeks; and of these services Thomas and Lora were seised by the hand of William; and because the service of seven shillings and nine pence was arrear for ten years [the avowant] took the said oxen in the said place in his fee, as well he might.

Hugh says that Thomas and the others took all the said beasts as he complains; and as to the seven oxen which [the avowant] confesses to have taken, he says that the avowant cannot avow the taking lawful in the said place; for he says that this place of Suthbrech is a certain field (*campus*) which, by old custom there used, ought to be ploughed and sown for six successive years, and then for the next six successive years it should lie fresh, and throughout those six years when the field happens to lie fresh, the field is a common pasture, belonging to the free tenement of [the plaintiff] and all the other freeholders of the said vill who hold by bovates, etc., for all manner of beasts throughout the year etc., and when it is sown etc., it is a common pasture in the open time etc.; and he says that he

31. GENTYLCORS *v.* BROWN.[1]

Nota des chateux de un testatour hors de garde des executours emportez, ou il ne covient mie de moustrer testament.

Nota qe sy executours portent bref de trespas de chateux emportez qe furent al mort et en lour garde pris a force[2] etc. 'ad retardacionem testamenti,' les executours ne serrount chacietz a mestre avaunt testament ne autre fait qe tesmoigne[3] q'il sount executours, pur ceo qe c'est un personel trespas qe les chateux furent pris hors de lour garde, et yl mesmes seisi[4] des chateux puis la mort le testatour.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 119, Hertf.

Thomas Broun and John de Kirketon in mercy for divers defaults.

Thomas and John were attached to answer William Gentylcors and Roesia de Mukelfeld and William Blaket, executors of the testament of Thomas de Mukelfeld, of a plea why they [together with William de Basingstoke[5]], by force and arms took and carried away the goods and chattels which were of the said Thomas de Mukelfeld, found at Mukelfeld under the custody (*sub custodia*) of the said executors, to the value of sixty

[1] *Vulg.* p. 74. Text from *B* (Hil.): compared with *L* (Pasch.). [2] afforce *B*; a force *L*. [3] *Om.* ne . . . tesmoigne *L*. [4] et eus seisi *L*. [5] Interlined.

Note from the Record (*continued*).

holds of [the avowant] and Lora a messuage and thirty acres of land in the said vill, to which the said common pertains; and he demands judgment whether the avowant can avow as lawful the said taking in his common of pasture for the arrears of service (if any) of the said William.

[The avowant] says that the field of Suthbrek is not a common pasture pertaining to the free tenement of the plaintiff and others, as the plaintiff says; for he says that it is at the will of those who have land in that field whether they by their common assent will or will not sow their land in any year, and when the field lies fresh no one is able to common there with any beasts of his, save only those who hold land in that field; and he also says that the place in which the seven oxen were taken is the proper soil of the said Hugh and parcel of the bovate of land which William holds of them [the avowant and Lora]; and that this is so he puts himself upon the country.

Issue is joined. And because the avowant cannot abide the averment without Lora, be she summoned for the octave of Michaelmas. [Further process follows; but the parties do not get as far as a *venire facias*.]

31. GENTYLCORS *v.* BROWN.[1]

Executors need not produce the will when they bring trespass for goods taken from their own possession.

If executors bring a writ of trespass for chattels which belonged to the dead man forcibly taken from their custody 'in retardation of his testament,' they will not be driven to produce the testament or any other instrument proving them to be executors, for this is a personal trespass, the chattels having been taken from their custody, and they themselves having been seised of the chattels since the testator's death.

Note from the Record (*continued*).

pounds, and other enormous things to them did, to the grave damage of the executors and to the delay (*retardacionem*) of the execution of the said testament and against the peace etc. The executors, by William de Bretteville their attorney, complain that [the defendants] on [29 Dec. 1308] Sunday next after Christmas in A. R. 2, by force and arms, to wit, bows and arrows, took and carried away goods and chattels which were of the said Thomas de Mukelfeld, to wit, wheat, barley, oats, pease, straw, hay, and other goods and chattels at Mukelfeld, and did other enormous things

[1] Proper names from the record.

Note from the Record (*continued*).

to the grave damage of the executors and to the delay of the execution of the said testament and against the peace etc.: damages, forty pounds.

[The defendants], by Adam de Weston their attorney, after formal defence, say (*bene defendunt*) that on the day and year aforesaid they did not take or carry away any goods or chattels which were of the said Thomas de Mukelfeld, nor do any trespass as the executors charge against them; and of this they put themselves upon the country.

Issue is joined, and a *venire facias* is awarded for three weeks from Michaelmas. At that day the sheriff did not send the writ, so a *venire facias sicut prius* is awarded for the morrow of the Purification.

Afterwards, on the octave of Martinmas in A. R. 5, jurors come and say that Thomas de Mukelfeld was bound to William de Basingstoke in fifty pounds by the form of the statute made at Acton Burnel; and that by virtue of that statute, William sued a writ to the sheriff to take Thomas and also to deliver

32. LANCASTER *v.* STRATFORD (ABBOT OF).[1]

Quare impedit pur presentement de une vikerie, ou le pleyntif avoit graunté l'avowesoun de la eglise a le destourbour etc.

Johan de Lancastre[2] porta soun *quare impedit* vers l'Abbé de Stratforde et counta q'a tort luy destourba presenter covenable vikere etc.

Toud. L'an du R. le Roy[3] etc. se leva une fyn entre l'abbé et Jon etc., issint qe Jon conust ij. acres de terre et l'avowesoun dyl esglise de C. estre le droit l'abbé et[4] sa esglise come ceo q'il avoit de son doun saunz nule forsprise. Jugement, si encountre la fyn puissetz en cel avowesoun ren clamer.

Denom. C. nostre auncestre presenta un N. a la vic[arie] de mesme la esglise, qe a soun presentement fuist receu. En mesme le temps fuist la esglise pleyne de persone. Et pus presenta nostre ael a mesme la vic[arie] un B. qe a soun presentement etc. Et puis presenta mesme cestuy Jon un R., taunt come la esglise fuist pleyne et conseillé de persone, qe a soun presentement etc. Et issint ount il presenté come a groos. Jugement, depuis qe la fyn ne fit mencioun de la vicar[ie], et il ne[5] moustrent autre title de droit, pur quey il nous destourbent; et prioms bref al evesqe etc.

[1] *Vulg.* p. 74. Text from *B* (Hil.): compared with *L* (Pasch.) [2] Lant' *B*; Lancastr' *L*. [3] du regne *L*. [4] *Ins.* le droit de *L*. [5] ne eux ne *L*.

Note from the Record (*continued*).

his goods and chattels, lands, and tenements, to William by the form of the statute; and that the sheriff made a return of the writ to [the defendants], then bailiffs of the hundred; and that they as such bailiffs, according to the nature of the writ, caused to be extended and appraised by the oath of good and lawful men certain corn in the barn of Thomas de Mukelfeld at twenty-one pounds, ten shillings, and fourpence, before the hour of noon; and that on the same day about the hour of noon Thomas died; and after the hour of noon [the defendants] as bailiffs delivered the corn to William de Basingstoke by the said execution, without any other trespass done by force and arms; and they did not there take or carry away any other goods and chattels of the executors.

Afterwards, as the said executors do not prosecute, it is awarded that [the defendants] go thence without day, and that the executors and their pledges to prosecute be in mercy; and let inquiry be made for the names of the pledges.

32. LANCASTER *v.* STRATFORD (ABBOT OF).[1]

A man is seised of presenting to the parsonage and also separately to the vicarage. By fine he conveys 'the advowson of the church.' *Qu.* whether he still is patron of the vicarage.

John of Lancaster brought his *quare impedit* against the Abbot of Stratford and counted that wrongfully he disturbed him from presenting a proper vicar etc.

Toudeby. In [a certain] year of the [late] King's reign a fine was levied between the Abbot and John, whereby John confessed two acres of land together with the advowson of the church of C. to be the right of the Abbot and of his church, as that which the Abbot had by John's gift, without any exception. Judgment, whether against the fine you can claim anything in the advowson.

Denom. One C. our ancestor presented one N. to the vicarage of the church, who on his presentment was received. And at that time the church was 'full of a parson.' Afterwards our grandfather presented to the same vicarage one B., who at his presentment etc. Afterwards John himself while the church was full and counselled of a parson, presented one R., who on his presentment etc. And thus they presented to a [vicarage in] gross. And since the fine makes no mention of the vicarage, and they show no other title of right for their disturbance, we pray judgment and a writ to the bishop.

[1] Proper names from the record.

Malm. La fyne veot qe vous nous avietz graunté l'avowesoun saunz nule forsprise. Jugement, si encountre la fyn puisset ren demander en l'avowesoun.

Herle. Nous vous dyoms qe nostre auncestre presenta come a un gros, taunt[1] com ele fuist pleyne de persone; et yl ne pount dedire q'il ne presenta come au gros, et la fyne ne fet nul mencioun de la vik[arie], ne eux ne pount dire q'ele est[2] appendant. Jugement.

Toud. Sy l'abbé eust recoveré l'avowesoun del esglise par bref de droit, quey remeyndra devers[3] vous (*quasi diceret nichil*)? Nyent plus pas de cea, depuys qe del avowesoun la fyn se leva sanz[4] nule forsprise. Mès autre serroit s'ils fuissent deux avowez.[5]

Denom. Sy la esglise fut pleyne de persone et le viker[ie] fuist voide, et Jon presenta, et fuist destourbé, yl averoit le *quare impedit* a dereigner l'avowesoun come un groos, auxint come del personage s'yl fuist destourbé.[6]

Ber. Jeo vy une foithe un vikere porter une assise de novele disseisine vers un persone, ou dit fuist qe l'assise ne gist[7] point pur ceo qe ordiner[ie] est le patron a crestre et a decrestre a lour volunté la[8] porcioun del vikere.

Herle. Ceo ne fuist pas merveille, mès nous ne sumes pas ore en ceo cas, qar vikere et persone ne pount aver forsqe spiritualté,[9] et ceo qe Jon cleyme sy est lay fee et autre droit qe ne soit l'avowesoun del personage.

Malm. La fyne ne fet mencioun nyent plus de personage qe de vikar[ie]. Par quey par mesme la resoun sy la personage fuist voide, purrietz vous clamer l'avowesoun del personage, et issint serroit la fine nule.

Toud. ad idem. Cele[10] fyn ne serroit mye resceivable—'A. conust l'avowesoun de la personage et[11] l'avowesoun de la vikar[ie] de mesme[12] la esglise.' Et, del houre qe le fyn se leva del avowesoun saunz nule forsprise, etc.

Herle. Sy nous devoms demorrer en jugement, yl covent qe nous demorroms sour certeyn point. Et seymes a un s'il presenta come un groos, et puis demorroms en jugement.

Malm. A ceo n'avoms mester a r[espoundre] dil houre qe l'avowesoun fuist graunté et rendu[13] etc.

[1] gros a Johan auxi taunt *L.* [2] pount clamer estre *L.* [3] remeyndreit a *L.* [4] *Om.* sanz *B*; *ins. L.* [5] *This stands in the text B*; deuz (*or* denz) avowes' *L.* [6] desturble *L.* [7] girroyt *L.* [8] pur ceo que la seisine le patron porreyt acrestre et decrestre la *L.* [9] avoir si espiritual noun *L.* [10] Tel *L.* [11] ou *L.* [12] *Om.* mesme *L.* [13] graunte enterement *L.*

Malberthorpe. The fine shows that you granted the advowson without any exception. Judgment, whether against the fine you can demand anything in the advowson.

Herle. We tell you that our ancestor presented as to a gross [and so did John] while the church was full of a parson; and they cannot deny this presentation as to a gross, and the fine makes no mention of the vicarage, and they cannot say that it is appendant [to the parsonage]. Judgment.

Toudeby. If by writ of right the Abbot recovered the advowson of the church, what would be left in you? Nothing. And no more have you here, since the fine was levied [without] any exception being made.[1]

Denom. If the church were full of a parson, and the vicarage were vacant, and John presented and were disturbed, he would have the *quare impedit* to deraign the advowson [of the vicarage] as a gross, just as he would have in the case of the parsonage if he were disturbed.

Bereford, C.J. I once saw a vicar bring an assize of novel disseisin against a parson, and there it was said that the assize would not lie, for that the ordinary is the patron who can at his will increase and decrease the vicar's portion.

Herle. There was nothing wonderful in that, for vicar and parson can only have the spirituality. But that is not the present case, for what John claims is lay fee, and it is a right separate from the advowson of the parsonage.

Malberthorpe. The fine says no more of the parsonage than it says of the vicarage; so, by parity of reasoning, if the parsonage were vacant, you could claim the advowson of the parsonage; and in that case the fine would be a nullity.

Toudeby on the same side. Such a fine as the following would not be receivable:—'*A* makes conusance of the advowson of the parsonage and of the advowson of the the vicarage of the same church.' And since the fine was levied of the advowson without any exception, [we pray judgment].

Herle. If we are to abide judgment, we must abide it upon some certain point. So let us agree that he presented as to a gross, and then let us demur.

Malberthorpe. We have no need to answer to that since the advowson was granted and rendered [as one whole] etc.

[1] The text seems to add 'but this would be otherwise if there were two advowsons,' or 'if they were two patrons.' This looks like a comment.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 237, Essex.

The Abbot of Stratford was summoned to answer John de Lancastre of a plea that he permit him to present a fit parson to the vicarage of the church of Esthammes, which is vacant and belongs to his gift. John, by his attorney, says that he himself presented to the vicarage one William de Berewys, his clerk, who on his presentation was admitted and instituted in time of peace, in the time of King Edward, father of the present king; and that by his death the vicarage is now vacant; and therefore it belongs to John to present to the vicarage, but the Abbot impedes him: damages, one hundred pounds.

The Abbot, by his attorney, after formal defence, says that [the plaintiff] can claim nothing in the advowson of the vicarage; for he says that heretofore in the court here of King Edward, father of the now king, before R. de Hengham and his fellows, justices, etc., a fine was levied between this same Abbot, plaintiff, and the said John of two acres of land with the appurtenances in Esthammes and of the advowson of the church of the vill, whereof a plea of covenant etc.; and that by this fine [the plaintiff] confessed the said land and advowson to be the right of the Abbot and his church of St. Mary of Stratford as those which the Abbot has by the gift of [the plaintiff]; and as [the plaintiff] confessed in form aforesaid, supposing by the fine that the advowson of the church is entire and the right of the Abbot and his church, he [the Abbot] demands judgment.

John says that the fine ought not to prejudice him; for he says that he claims his presentation to the vicarage and not to the church; and he says

33. BLAKEMAN *v.* STONHUSE.[1]

Cui in vita vers iiij. qe fesoient defaute al autre jour etc., et un vint et enprist la tenaunce del entire etc.

Une femme porta soun *cui in vita* vers iiij. tenauntz. Et fuist le bref tiel: Precipe etc. unum mesuagium etc. quod clamat esse ius et maritagium[2] etc. Al primer jour toutz les tenauntz firent defaute. Par quey le graunt *cape* issit retourn[able] a cel jour. A quel jour les iij. fesoyent defaute. Le quarte vient en court et dit q'il ne fuist nyent somons etc.[3], et qaunt a les iij. autres, par lour defaute ne poet ren recoverir, pur ceo q'il ne ount ren en les tenemenz, ne avoient jour del bref purchasé. Prest etc.

Scrop. Nous pernoms a la defaute de ceux iij.[4] Et il ad gagié la ley pur luy. Par quey nous prioms seisine de terre en droit des autres.

[1] *Vulg.* p. 74. Text from *B* (Hil.): compared with *L* (Pasch.). [2] hereditatem *L*. [3] court endroit de ly il fust receu que nient somouns *L*. [4] de toutz iiij *L*.

Note from the Record (*continued*).

that Philippa, his mother, whose heir he is, when the vicarage was vacant in the time of [Edward I.], presented to the vicarage one Hugh de Flyntham her clerk, who on her presentation was admitted and instituted etc., at which time the church was full and counselled of one Alan la Zouche, parson of the church, presented by one Roger de Lancastre, father of John; and afterwards, the church being vacant by the death of Alan, the plaintiff presented to the same one Richard de Loughteburghe his clerk, who on his presentation was admitted, the vicarage then being full; and afterwards when the vicarage was vacant, the plaintiff presented thereto William de Berewys, by whose death the vicarage is vacant; wherefore he says that he and his said ancestors have presented to the vicarage as a gross and separate from the advowson of the parsonage, and likewise to the church as a gross by itself (*tanquam grossam per se*); and whereas the said fine makes no mention of the advowson of the vicarage, to which he claims to present, but only of the advowson of the church, to which at present he does not claim to present, and whereas the Abbot cannot show (*docere*) that the advowson of the vicarage is of the appendencies (*appendiciis*) of the advowson of the church, he demand judgment etc.

A day is given them to hear judgment here on the octave of St. John Baptist, saving to the parties their reasons etc. [After numerous further adjournments extending over some years the plaintiff fails to appear; therefore judgment is given for the Abbot, and a writ to the Bishop of London is awarded for the admission of the Abbot's presentee.]

33. BLAKEMAN *v.* STONHUSE.[1]

Procedure where one of several tenants in an action desires to cure his default and to defend the whole, the others making a second default.

A woman brought her *cui in vita* against four tenants. The writ ran thus: 'Command etc. a messuage etc. which she claims as her right and marriage portion[2] etc.' On the first day all the tenants made default, so the great *cape* issued, returnable on this day. Then three made default. The fourth came and as to himself said that he was not summoned, and that as to the others [the demandant] could recover nothing by their default because they have nothing in the tenements and had nothing on the day of writ purchased. Ready etc.

Scrope. We betake ourselves to the default of the three. He has waged his law for himself. So we pray seisin of the land as regards the others.

[1] Proper names from the record. [2] Or 'inheritance.'

Hengh.[1] Par lour defaute ne poeit ren recoverer, pur ceo q'il ne ount rien ne avoyent jour du bref purchasé. Prest etc.

Scrop. Ceo serroit a prendre diverses issues en un plee, scil. a deffendre une parcele par sa ley et estre al averement qaunt al remenaunt.

Hengh.[2] Ceo n'est mye inconvenient a prendre un issue a[3] un parcel et un autre issue a[4] un autre parcel.

Denom. Vous avietz fait defaute ceinz. Par quey a doner autre r[espounse] einz ceo qe vous avietz sauvé vostre defaute n'entendoms mye qe vous serrez r[ece]u. Et d'autrepart, c'est un *precipe*, et s'yl abate en[5] partie il abate en tout. Par quey sy vous fuistes r[ece]u a vostre ley en droit de la parcelle et vous affermetz la tenaunce enterement en[6] vostre persone, quel procès averoms nous ver les[7] autres?

Stanton. Yl est en court prest a r[espoundre][8] sy vous voilletz relesser la defaute.

Scrop. Nous pernoms a sa defaute; et, depuis q'il afferme l'entier des tenemenz[9] en sa persone, n'entendoms pas qe a faire[10] sa ley doyve estre r[ece]u.

Stanton. Yl gagea[11] la ley del[12] entier.

Scrop. Ceo ne pout il faire; qar, s'yl defaillit de sa ley, ceo perdroit yl autrefoiz;[13] qar nous voloms averrer q'il furent joyntenauntz jour de bref purchasé, sy la court le puisse soeffrer.

Stanton. Les autres ount perdu par lour defaute qaunt q'ils puissent perdre. Par quey sy vous recoveretz, vous r[ecoveretz] l'entier.

Scrop. En cele manere nous resceyveroms a deffendre l'entier.[14] (Et puis weyverent la defaute et plederent au[15] chief, pur ceo qe dit fuist par Sire Hervy qe s'il[16] rec[overast] ele rec[overeit] l'entier ver lui).

Scrop. counta vers luy.

Hengh.[17] Le bref veot 'quod clamat esse ius et maritagium,' et sy ele eit ren en ceux tenemenz c'est de soun purchase. Par quey le bref dirreit 'de dono etc.'[18]

Denom. Vostre bref dirra[19] 'ius et hereditatem' vel 'ius de dono' vel 'ius et maritagium.' Par quey le bref est assetz bon.[20]

[1] Ing. *L.* [2] Ing. *L.* [3] de *L.* [4] de *L.* [5] em *B*; en *L.* [6] de *L.* [7] proces ceo freyt vers *L.* [8] court et prest ore *L.* [9] lentierete de la tenaunce *L.* [10] affaire *B.* [11] *corr.* gagera (?). [12] pur *L.* [13] qar . . . autrefoiz, *perhaps marked for omission*, *B*; qar sil defayllast de sa ley il perderoyt autri franktenement L. [14] receyveroms la ley *L.* [15] en *L.* [16] si ele *L.* [17] Ingh. *L.* [18] bref serroyt quod talis dedit etc. *L.* [19] poet dire *L.* [20] Residue missing in *L.*

Ingham. You can recover nothing by their default, for they have nothing and had nothing on the day of writ purchased. Ready etc.

Scrope. That would be to take divers issues in one plea: namely to defend part by your law and to be at an averment as regards the residue.

Ingham. There is no inconsistency in taking one issue for one parcel and another for another.

Denom. You have made a default in court. We do not think that you can be received to give any other answer until you have cured your default. Besides, this is a *praecipe*, and if it abates in part, it abates as a whole. Suppose that you were received to your law about that parcel, and yet you affirm the tenancy of the whole to be in your person, what process could we have against the others?

STANTON, J. He is in court and ready to answer, if you are willing to release the default.

Scrope. No, we betake ourselves to his default; and, since he takes upon himself the entire tenancy, we do not think that he ought to be received to make his law.

STANTON, J. He will wage his law for the whole.[1]

Scrope. He cannot do that, for if he failed in his law he would lose a third person's freehold;[2] for we will aver that the others were joint with him on the day of writ purchased, if the Court can permit us so to do.

STANTON, J. The others have lost by their default whatever they could lose; so if you recover, you will recover the whole.

Scrope. In that manner we will receive his law. (But afterwards they waived the default and pleaded to the principal matter, because Sir Hervey said that if [the demandant] recovered against [this one tenant] she would recover the whole.)[3]

Scrope counted against him.

Ingham. The writ says 'which she claims to be her right and marriage portion,' and if she has anything in these tenements, it is by her purchase, so the writ ought to name the donor.

Denom. The writ may say 'right and inheritance' or 'right by the gift [of]' or 'right and marriage portion.' So this writ is good enough.[4]

[1] That is, you will get the whole if he fails in his oath about non-summons.

[2] The variant is preferable to the text.

[3] Or 'will receive him [for] the whole.'

[4] As to this point, see our first volume, pp. 171, 195.

Stanton. Dites outre.

Hengh. Ele ne avoit unqes rien en les tenemenz, sy noun come feme ove soun baroun.

Scrop. C'est soun droit et soun mariage. Prest etc.

Et alii econtra.

Nota[1] en un *cui in vita* ou le tenaunt entra par le baroun mesmes, il avoit la veuwe, pur ceo q'il nest pas ousté par[2] statut.

Nota en un *cui in vita* le tenaunt tendit l'averrement qe le baroun la femme, par qi ele dit le lees estre fait, n'avoit rien en les tenemenz q'il pout lees faire.[3]

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 237d, Glouc.

Agnes, wife that was of Elias Blakemon, by her attorney, offered herself on the fourth day against Elena wife of Geoffrey de Stonhuse, William son of the same Geoffrey, and John de Stonhuse, of a plea of two acres of meadow in Kynges Stanleye which she claims as her right etc. against them and the said Geoffrey. And they [Elena, William and John] do not come. And as well they as the said Geoffrey heretofore made default, to wit, on the octave of St. Michael last past, after an essoin, so that the sheriff was then commanded to take the meadow into the King's hand and to summon them to be here on this day, to wit, a month after Easter. And the sheriff now witnesses the day of the taking and that he summoned them.

And Geoffrey now comes by his attorney and says that he alone holds the meadow and held it on the day of writ purchased, and that Elena and the others have nothing, and that he is ready to answer her [the demandant] thereof. (*Note continued on opposite page.*)

34A. ANON.[4]

Cui in vita, ou le lees fut traversé.

A. porta le *cui in vita* vers un H. in que non habet ingressum nisi par A. a qi son baroun lessa cui etc.

Herle. Son baroun ne fut unqes seisi issi q'il pout lesse fere.

Mal. Vous ne responez pas a nous, qe vostre respounse est double en sey, ou q'il ne fut unqes seisi, ou q'il fut seisi com de nostre droit issi q'il ne put lees fere par comune ley. (Et fut chacé outre.)

[1] These notes are found at different points in *L.* [2] pas en cas de *L.* [3] *Ins.* et fut laverement receu *L.* [4] Text of this version from *S* (Hil.): compared with *T* (Hil.).

STANTON, J. Plead over.

Ingham. She never had anything in the tenements, except as wife with husband.

Scrope. It is her right and marriage portion. Ready etc.

Issue joined.

Note[1] that in a *cui in vita* where the tenant entered by the husband himself, he had the view, for the Statute[2] does not deprive him.

Note that in a *cui in vita* the tenant tendered the averment that the demandant's husband who was said to have made the demise had nothing in the tenements so that he could demise.[3] And the averment was received.[4]

Note from the Record (*continued*).

Agnes, by her attorney, demands against him the two acres of meadow as her right and marriage portion and those into which he had no entry, except by (*per*) Elias Blakemon sometime her husband, who demised them to him, and whom in his lifetime she could not [contradict].

And Geoffrey says that Agnes can claim no right in the meadow, for he says that Agnes never had anything in the meadow, except as wife of Elias sometime her husband; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for three weeks from Michaelmas. There is a further adjournment to the morrow of the Purification.

34A. ANON.[5]

Duplicity. Plea to writ and plea to action.

A. brought the *cui in vita* against H. saying 'into which he had no entry save by [X.], to whom her husband, whom [she could not contradict], demised.'

Herle. Her husband never was seised so that he could make a lease.

Malberthorpe. You do not answer us, for your answer is of double meaning: either that he was never seised or that he was seised in our right, so that by the common law he could make no lease. (Herle was driven to plead over).

[1] Whether these notes are connected with the foregoing case seems doubtful.

[2] Stat. Westm. II. c. 48.

[3] Or, as we should say, 'nothing enabling him to demise.'

[4] This last sentence is in one only of our books. The following case throws some doubt on its correctness.

[5] The corresponding record has not been identified.

Herle. La ou el dit qe son baroun lessa a un A., il ne lessa pas a lui. Prest etc.

Mal. Tant amont qe A. ne entra par my ly. Par quai donqe il coveynt qe vous nous donez bon bref.

Herle Je ne plede pas a vostre bref, mès a vostre actioun, qe le lees vostre baroun vous don actioun, a qel lès nous sumes a travers. Jugement.

Mal. Qe nostre baron lessa a A.

Et alii econtra.

Et sic nota q'en breve d'entré homme purra traversere l'entré saunz doner bon brefe.

34B. ANON.[1]

En un *cui in vita* le tenant dit q'il ne lessa unqes a ly lez tenementz : prest etc.

Malm. Dunque il vous covent dire a[2] qi, qar taunt amounte que vous n'entrastes pas par nostre baron, et issi traversez vous l'entier. Par quai il vous done[3] autre par qui vous entrastes.

Scrop. Vostre[4] baron, que vous dites que dust avoir aliené a nous, les tenementz unques avoms etc.[5] Prest etc.

Malm. Ce pust avoir double entendement : ou q'il ne lessa unques a vous ne a nul autre, ou que il lessa a un autre et ne mye a vous. Par quai a tiel averement, q'est double, ne devetz estre resceu.

Scrope. Il ne lessa unques. Prest etc.

Et alii econtra.

35. ANON.[6]

De meen, ou il fuist destreint pur sute a hundred et par aultre qe par le seignour paramount, et ne prist rien par soun bref etc.

Un home porta soun bref de meen vers Robert de S., et counta q'a tort ne luy aquite des services q'un Henri de R. de luy demaunde del

[1] Text of this version from *L* (Pasch.). [2] par (?). [3] vous covent doner (?). [4] De vostre (?). [5] unques lessa etc. (?). [6] *Vulg.* p. 75. Text from *B* (Hil.).

Herle. Whereas she says that her husband leased to [X.], he never leased to him. Ready etc.

Malberthorpe. Tantamount to this that [X.] never entered by him. Therefore you ought to give us a good writ.

Herle. I am pleading, not to your writ, but to your action: for it is your husband's lease that gives you action and this lease we traverse. Judgment.

Malberthorpe. Our husband leased to [X.].

Issue joined.

So note that in a writ of entry one can traverse the entry without giving a good writ.

34B. ANON.

In a *cui in vita* the tenant said that [the husband] never demised the tenements to him. Ready etc.

Malberthorpe. Then you ought to say [by][1] whom [you had entry], for [your plea] is tantamount to 'We did not enter by your husband,' and so you traverse the whole.[2] Therefore you ought to say by what other person you entered.

Scrope. Your husband, who, so you say, alienated the tenements to us, never demised them [to us]. Ready etc.

Malberthorpe. That may have a double meaning, namely, that he demised neither to you nor to another, or that he demised to another and not to you. To such a double averment you ought not to be received.

Scrope. He never demised. Ready etc.

Issue joined.

35. ANON.

If by writ of mesne acquittance of suit to a hundred court can be demanded at all, this can only be where the defendant is mesne between plaintiff and distrainor.

A man brought his writ of mesne against Robert of S., and counted that wrongfully does he not aquit him of the services which one Henry of R. demands from him for his free tenement [in such a

[1] Some small corrections in the text seem necessary.

[2] Or 'the entry': the text gives *lentier*.

fraunctenement etc. : et pour ceo a tort qe la ou yl tient un mees par certeinz services etc., pur les queux yl luy doit aquiter vers toute gentz, la vient un H. de R. et luy demaunde siwite a soun hundred de W. et a ceo faire luy destreint etc.

Pass. La ou yl ad countee qe a tort ne luy aquitoms etc. et ad dit q'un H. de R. de luy demaunde siwite a soun hundred de W. etc., la dyoms nous qe H., vers qi il prie estre aquité, n'ad nul hundred en W. Prest etc. Jugement du bref.

Hedon. Veietz ici vostre fait qe veot qe vous estes lié vers toute gentz. Jugement.

Pass. Bref de meen ne gist pas sy noun en cas ou le tenaunt en demene est destreint par le seigneur paramount et le meen luy doit aquiter. Et ceo apert par les paroules del bref: 'unde medius est inter eos et eum acquietare debet' etc. Mès sy celuy qe vous ad destreint n'ad nul hundred, dounqe n'ad il nul meen. Et desicome nous tendoms d'averer qe H. qe destreint etc. n'ad ren en le hundred de W., jugement.

Hedon. Nous ne poms dedire qe le hundred est au Ric[hard]; mès H. nous ad destreint et vous par vostre fet nous devetz aquiter ver toute gent.

Pass. Vous avetz conu qe le hundred est a R., et cele sute ne chiet nyent en aquitaunce, qar cele sute chiet et est en demaunde par resoun de reseaunce. Et tout fuist issint, unqore dirreit soun bref des services quod nos ab eo exigimus.[1]

Stanton. Vostre bref est malement conceu, qe vous demaundetz aquitaunce des services qe ne pount mye estre aquité en la manere come vous la demaundetz, qar il n'est mye meen, et vous avietz conu qe le hundred est a R. Par quey agarde la court qe vous ne pernetz ren par vostre bref.

{Nota[2] de suyte [scil. venue, qar sute est pur tenemenz[3]] real a hundred q'est due par reson de la persone, ne put homme vers son seignour avoir acquitaunce.}

[1] *Sic B.* [2] Text from *M*; compared with *P*. This note of the case is all that is given. [3] Gloss in *P*.

place]: and wrongfully, because, whereas [the plaintiff] holds a messuage by certain services because of which [the defendant] ought to acquit him against all men, there comes this Henry of R. and demands suit to his hundred of W. and distrains [the plaintiff] to do it.

Passeley. Whereas he has counted that we do not acquit him and has said that Henry demands suit to his hundred of W., we tell you that Henry, against whom he prays to be acquitted, has no hundred in W. Ready etc. Judgment of the writ.

Hedon. See here your deed, which says that you are bound [to acquit] against all men.

Passeley. A writ of mesne only lies where the tenant in demesne is distrained by the lord paramount and the mesne ought to acquit him. That appears by the words of the writ: 'whereof he is mesne between them and ought to acquit him.' But if he who has distrained you has no hundred, then there is no mesne in the case. And since we tender to aver that Henry the distrainor has nothing in the hundred of W., we pray judgment etc.

Hedon. We cannot deny that the hundred belongs to Richard; but Henry has distrained us, and you by your deed are bound to acquit us against all men.

Passeley. You have confessed that the hundred belongs to Richard, and this suit [of court] is not a matter for acquittance, for it is a matter that is demanded by reason of residence. And, even if it were [not] so, his writ ought to say 'of services which we exact from him.'[1]

Stanton, J. Your writ is ill conceived, for you demand acquittance of services which cannot be acquitted in the manner that you demand, for the defendant is not mesne, and you have confessed that the hundred belongs to R. [and not to the distrainor]. Therefore the court awards that you take nothing by your writ.

{Note[2] that for suit royal to a hundred—or rather, not suit but attendance, for suit is for tenements[3]—which is due *ratione personae*, one cannot have a right to be acquitted by one's lord.}

[1] This can hardly be right; but we have only one copy of the case.

[2] This may be a note of the preceding case.

[3] This gloss stands in one of our books.

36. ANON.[1]

Dowere, ou le tenaunt woucha a garraunt le heir le baroun la femme qe fust en garde. Le gardein dit qe il ne doit garrauntir, qe il avoit actioun a demaunder les tenemenz par estatut de Marleberge etc.

Un home dona certenz tenemenz a un homme et a sa femme a tener a terme de lour deux vies, rendaunt les xv. aùnz procheinz etc. viij. mars par an, et après les xv. aunz rendaunt xl. li. a terme *ut supra* par an etc.[2] Le lessour devia. Sa femme porta soun bref de dowere ver le homme et sa femme. Et vindrent en court et voucherent a garraunt l'eyr le baroun, qe fuist deinz age etc. et en la garde la Countesse de Nichole. La Countesse vient par somounse et demaunda par quey il luy voucherent etc. Et yl moustra avaunt le fait le pere etc. qe tesmoigna *ut supra*.

Toud. Par cel fet ne vous devoms garrauntir, qar nostre actioun nous est sauvé a demaunder mesme les tenemenz en noun de garde, nyent countreesteaunt cel fait, par statut de Marleberge. Jugement, si garrauntir devoms.

Denom. Nous avoms vouché par le fait, qe tesmoigne qe nous avoms fraunctenement a terme de nos deux vies, et de cel estat vouch[oms] a garraunt. Jugement, si vous ne nous devetz garrauntir.

Toud. Sy nous entrassoms en la garrauntie, nous serroms barré d'actioun a demaunder mesme les tenemenz en noun de garde; et, depuis qe le statut ne nous ouste mye de profit de nostre garde par resoun de tiel fet, qe ne veot qe terme etc., jugement sy nous devoms garrauntir, qar sy nous fuissoms a demaunder la garde par bref, ceo fet nous barreit mye d'actioun. Prest etc.

Et sic pendet.

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 156d, Hertf.

As it seems not impossible that the discussion here reported in a single manuscript arose at some stage of the case of which the following is the record, we give that record, though it does not throw light on the point discussed.

William Bacun and Agnes his wife, by the attorney of Agnes, demand against the Prior de Cruce Roesie [Royston] the third part of one messuage,

[1] *Vulg.* p. 76. Text from *B* (Hil.). [2] The lessees may be in honour trustees for the lessor's heir and at his full age will surrender the heavily rented tenement.

36. ANON.[1]

Qu. whether the right to avoid certain collusive assurances given to the guardian by Stat. Marlb. c. 6 extends to a freehold lease, and whether this right gives the guardian a good plea when the lessor's infant heir is vouched to warrant the lessee against the lessor's doweress.

A man gave certain tenements to a man and his wife to hold for term of their two lives, rendering during the fifteen years next following eight marks yearly, and afterwards forty pounds yearly for [the residue of the term].[2] The lessor died. His wife brought her writ of dower against the husband and wife. They came into court and vouched the heir of [the lessor] to warranty. He was within age and in ward to the Countess of Lincoln. She came by summons, and asked wherefore they vouched etc. They put forward the deed of the infant's father, which witnessed as above.

Toudeby. By this deed we are not obliged to warrant, for our action to demand the same tenements by way of wardship is saved to us by the Statute of Marlborough, notwithstanding this deed. Judgment, whether we ought to warrant.

Denom. We have vouched by the deed which testifies that we have freehold for the term of our two lives,[3] and for that estate we vouch to warranty. Judgment, whether you ought not to warrant us.

Toudeby. If we entered into the warranty, we should be barred from an action to demand these same tenements by way of wardship; and, since the Statute does not oust us from the profit of our wardship by reason of such a deed, which only [creates] a term etc., we pray judgment whether we ought to warrant, for, if we were demanding the wardship by writ, this deed would not bar us from the action. Ready etc.

And so the case pends.

Note from the Record (*continued*).

of one carucate of land, of three acres of meadow, of two acres of pasture, of twenty-six shillingworths of rent in Westrede[4] in the county of Hertford, which is extended at thirty-four shillings and seven pence and a

[1] We are dependent on a single manuscript. See our note from the record.

[2] The great rise in the rent suggests collusion between lessor and lessees. See note on the opposite page.

[3] See Stat. Marlb. c. 6: 'quas tradere voluerint ad terminum annorum.'

[4] Reed, a little south of Royston.

Note from the Record (*continued*).

farthing and the third part of a farthing per annum, as the dower of Agnes by the endowment of Adam de Twynham, her first husband.

And the Prior comes by Ralph de Dukesworth his attorney; and heretofore he vouched to warrant Walter son and heir of Adam de Twynham, who was within age, and whose body was in the wardship of Gilbert son of Duncan, and part of whose land was in the wardship of Henry de Lacy, Earl of Lincoln, Adam of Skelton and John of Skelton, who were to be summoned in the counties of Cumberland and Westmoreland, and part of whose land was in the wardship of the said William Bacun and Agnes, who were to be summoned in the county of Hertford.

Henry de Lacy, by John de Wynterborne his attorney, comes and says that he has not in his wardship any lands or tenements of the inheritance of the said heir, nor had he on the octave of Hilary A. R. 2, when the Prior vouched him to warrant.

The Prior cannot deny this. Therefore let the Earl go hence without day and the Prior be in mercy.

Adam de Skelton and John de Skelton, guardians, by Ralph Conyn their attorney, come and say that one William de Gardinis holds two parts of the manor of Brigham in the county of Cumberland in wardship of the inheritance of the said heir, and held them on the said octave of Hilary

37. HALSTEDE *v.* HURAUND.[1]

Douwere.

Une Agnes porta soun bref de douwere et demaunda la terce partie d'une rente de x. quarters de furment par an.

Launf. Nous tenoms une rente de v. quarters de furment et de v. de musteloun du lees un Richard a terme de nostre vie, et de ceo vouchoms a garraunt.

Denom. Dounqe prioms nous qe nostre demaunde soit amendé : c'est assavoir, de x. quarters de furment et de mustiloun.

Lauf. Quey dites vous au voucher ?

Denom. Estoise etc.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 2d, Ess.

Elizabeth, wife that was of John, son of William de Halstede, by John de Wykham her attorney, demands against Master Richard Huraund the third part of a rent of five quarters of corn and five quarters of meslin (*mixtilionis*) in Halstede as her dower etc. (*Note continued on opposite page.*)

[1] *Vulg.* p. 77. Text from *B* (Hil.).

Note from the Record (*continued*).

when the Prior vouched them to warrant; and this they are ready to aver; and since the Prior did not make mention of William de Gardinis in his voucher to warrant, they crave judgment of his voucher.

The Prior says that Adam and John cannot for that reason devolve themselves from the warranty; for he says that William on the day and year aforesaid had no lands or tenements in his wardship of the inheritance of the said heir; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* to the sheriff of Cumberland is awarded for three weeks from Easter, the same day being given to the demandants.

William Bacun and Agnes his wife, guardians, by Adam de Weston the attorney of Agnes, now come by summons, and as to the portion of the inheritance aforesaid now belonging (*contingente*) to them in their wardship, to wit, to the value of five shillings and two pence and the third part of a farthing of the land of the said heir, they in the name of the said heir warrant to the Prior and render to the said William Bacun and Agnes the demandants [*i.e.* to themselves] her dower.

Therefore it is awarded that the Prior hold in peace, and that William and Agnes the demandants have of the land of the heir in wardship to the value of the portion aforesaid.

37. HALSTEDE *v.* HURAUND.[1]

A demand amended.

One Agnes brought her writ of dower and demanded the third part of a yearly rent of ten quarters of wheat.

Laufer. We hold a rent of five quarters of wheat and of five of mixed grain by the lease of Richard for the term of our life, and of this we vouch to warranty.

Denom. We pray, then, that our demand be amended, so that it be for ten quarters of wheat and mixed grain.

Laufer. What say you to the voucher?

Denom. It may stand.

Note from the Record (*continued*).

Richard says that he holds the said rent by (*ex*) the gift and grant of the said John, son of William, sometime husband etc., to be received from Andrew Huraund and Margery his wife for the term of the lives of Andrew

[1] Proper names from the record. We are dependent on a single manuscript.

Note from the Record (*continued*).

and Margery; and he vouches thereof to warrant Robert de Tholveton and Agnes his wife, and Isabella, sister of Agnes, daughters and heirs of John son of William, which Isabella is within age, and her body is in the wardship of Elizabeth, and a certain part of her land is in the wardship of John Butteturte and another part in the wardship of John, son of Peter de

38. ANON.[1]

Detenue des chartes, ou le defendaunt voleit estre a sa ley : et puis fust al averrement du bail saunz respoundre à la detenue.

Un A. porta detenue de chartre vers B. et dit q'a tort lui detynt une chartre,[2] la quele il lui bailla a garder issint q'il le rebaudereit quel hure etc.[3]

Wilb. Que nul chartre nous bailla. Prest a deffendre [4] encontre lui et encontra sa suyte.

Pass. Sire, nous vous dioms qe un tiel nous enfeffa del manoir de C. etc. par cele chartre etc., de quel manoir nous sumes seisi, et qe nous lui baillams la chartre a garder. Prest etc. Et la detenue par cas cherreit a nostre desheritaunce. Jugement, si a vostre ley etc. {E [5] d'autrepart en la chartre est contenu clause de garrantie qe chet en le droit ; ergo etc.}

Wilb. Depus qe vous dites qe vous baillastes, et rien n'avez qe testmoigne vostre dit, il semble par taunt qe vostre dit prove qe nous serroms r[eceu].

Ber. Ou avez veu qe un homme fut a sa ley en tiele parole [6] (*quasi diceret nunquam*) ? Item, il fit folement q'il vous bailla la chartre sanz ceo q'il eust euw [7] vostre lettre. Par qei resceivez l'averrement.[8]

{*Ber.*[9] a *Wilby.* Veez ceo q'il vous dient q'il vous baillerent [10] vous une chartre a garder, en la qele est contenu feffement e clause de garrantie. Voleez l'averement ou noun ?

Wilby. Si vous agardez.

Ber. Si nous agardoms, ceo serra ove la sauce !

Wilby. Qe nul chartre nous baillerent [11] : prest etc.

Et alii contrarium.}

[1] *Vulg.* p. 78. Text from *M*: compared with *P*, *S*, *T*, also with *B*, *Y* (f. 220). Headnote from *B*. [2] *Ins.* en la quele fut contenu qe un C. enfeffa le dit A. del manoir de P. etc. forspris le chef mees *Y*. [3] *Ins.* en la presence A., B., C., et D. *Y*. [4] *Ins.* par nostre ley *P*. [5] From *Y*. [6] plee *P*, *S*, *T*. [7] eu *P*. [8] *Ins.* et sont a issu sur le baill' *S*, *T*. [9] End of the case in *Y*. [10] baillent *Y*. [11] baillent *Y*.

Note from the Record (*continued*).

Halstede, by the charter of John, son of William, which he [Richard] produces and which witnesses this.

Therefore by aid of the Court be Robert and Agnes and likewise the said guardians summoned that they be here on the quindene of Michaelmas; and be they summoned in this same county.

38. ANON.

In an action of detinue of charters the defendant is excluded from his law. Issue is joined on the bailment, not on the detinue.

One A. brought detinue of charter against B. and said that wrongfully does he detain from him a charter [1] which [2] he bailed to him for rebailment [on demand].

Willoughby. He bailed us no charter. Ready to defend against him and against his suit.

Passeley. Sir, we tell you that a certain person enfeoffed us of the manor of C. by this charter etc., and of that manor we are seised, and we bailed the charter to [the defendant] for custody. And perchance the detention of it might occasion our disheritance. Judgment, whether [you can be received] to your law. {Besides,[3] in it there is a clause of warranty, which touches 'the right.' Therefore etc.}

Willoughby. Since you say that you bailed and have nothing to witness your assertion, it seems that your own words prove that we shall be received.

Bereford, C.J. When have you seen a man at his law in such a plea? Never. [It is true that] he who bailed a charter to you without taking a letter from you did a foolish thing. [But] you must accept the averment.[4]

{Bereford,[5] C.J., to *Willoughby.* See what they say—that they bailed to you for custody a charter in which is contained a feoffment with clause of warranty. Will you receive the averment or not?

Willoughby. If you so award.

Bereford, C.J. If we award it, it will be with the sauce!

Willoughby. They bailed us no charter: ready etc.

Issue joined.}

[1] Some add, 'in which was contained that one C. enfeoffed A. of the manor of P., except the chief messuage.'

[2] Some add, 'in the presence of certain named persons.'

[3] From one book.

[4] Some books add, 'and they were at issue on the bailment.'

[5] From one book.

{*Pass.*[1] A la ley ne devetz avener pur ceo qe ceo touche herit[aunce] et desherit[aunce], qar nous sumes empledé de cel manoir et par defaute de cel chartre sy pussoms perdre nostre garrauntie. Et d'autrepart il ount tendu un averrement devaunt ces houres etc.

Hedon ut prius.

Pass. Nous voloms averrer qe vous l'avietz de nostre baille.

Wilb. Vous dites qe vous nous baillastes la chartre, et vous ne baillastes point. Prest etc.

Staunton. Qaunt veistes vous tiel issue en bref de detenue des chartres ?

Wilb. Nous avoms veu l'un et l'autre. Estre ceo, sy nous fuissoms en un bref de men, nous serroms a nostre ley qe nyent destreint par nostre defaute etc.

Et puis l'averrement fuist receu q'il n'avoit pas la chartre de soun baille saunz respoundre a la detinue.

Et fuit casus q'un R. avoyt lessé le manoir a B. a terme de iij. aunz, et pur ensurer la terme luy avoit fait cele chartre et baillé en owele mayn etc. etc.}

39A. ANON.[2]

Ou en le *cui in vita* enfant dedeinz age fust vouché ; e suffert, e la femme demorra tanke al age etc.

Nota q'en *cui in vita* qe Alice, qe fu femme G., porta vers B., e dist q'il n'oust entré si noun pus le lees qe G. etc., a qi ele ne poeit countredire en sa vie. B. voucha C. C. garr[anty], e voucha un J., fiz et heir F., qe est deinz age.

Laufar. Et nous jugement, desicom ceo est un bref d'entré, a quoi ele ne poeit etc. ; e le statut voet ' quod emptor expectet etatem.'

[1] From *B*, in which the preceding part of this case runs thus : Un home porta soun bref de detenue de chartres et dit qil luy detyent une chartre en la quele est compris qe un R. luy dust avoir feffe du manoir de E. etc. la quele chartre yl luy bailla a garde e a rebailler a sa volunte etc. *Hedone.* Qe nule chartre ne nous bailla : prest etc. [2] Text from *Y*.

{*Passeley.*[1] You ought not to get to your law, for this is a matter that touches heritage and disherison, for we are impleaded for this manor, and, for want of this charter, we may lose our warranty. Besides, before now they tendered an averment.

Hedon repeated what he had said.

Passeley. We will aver that you had [the charter] by our bailment.

Willoughby. You say that you bailed the charter. You did not bail it. Ready etc.

STANTON, J. When saw you such an issue in a writ of detinue of charter?

Willoughby. We have seen the one [issue] and the other. Moreover, in a writ of mesne we could get to our law that the [demandant] was not distrained by our default etc.[2]

Afterwards the averment that he had not the charter by [the plaintiff's] bailment was received, without any answer about the detinue.

The case was this—that one R. had demised a manor to B. for a a term of three years, and to insure him the term had made him this charter and delivered it into an equal hand etc.[3]}

39A. ANON.

In a writ of entry *cui in vita* in the *post* a first vouchee vouches an infant. *Qu.* the effect of Stat. Westm. II. c. 40.

Alice, sometime wife of G., brought a *cui in vita* against B. and said that he had no entry save after (*post*) the lease which G. etc., whom in his lifetime she could not contradict. B. vouched C. C. warranted, and vouched J., son and heir of F., who is within age.

Laufer. We pray judgment, since this is a writ of entry *cui non potuit etc.*, and the Statute says 'let the buyer await the [vouchee's] age.'[4]

[1] In one of our books, after the defendant's offer to wage law, the report proceeds as follows.

[2] This instance may be chosen because it touches 'freehold and inheritance.'

[3] If then the plaintiff is the lessee and the defendant is 'the equal hand,' the plaintiff did not bail to the defendant. The source of this final note is not very trustworthy.

[4] Stat. Westm. II. c. 40: 'set expectet emptor, qui ignorare non debuit quod ius alienum emit, usque ad etatem waranti sui de warantia sua habenda.' See our vol. ii. p. 33.

Warr. e *Hedon.* Vous n'estes mie en cas de statut, pur ceo qe le vouch[eour] n'est pas achatour etc.

Et stetit.

39B. ANON.[1]

Une femme porta le *cui in vita* etc. en le *post dimissionem.* Le tenant voucha a garant. Le vouché vint en court, et voucha outre un enfaunt dedens age.

Lauf. Sire, nous prioms seisine de la terre par statut 'Expectet emtor'[2] etc.

Scrop. Vous n'estes[3] pas en cas de statut, qe statut eyde la ou cely q'est entré par baroun vouche a garant enfaunt dedens age, mès le bref est en le *post dimissionem.* Et estre ceo, le seconde vouché vouche l'enfaut, q'est dedens age. Par qey vous n'estes pas en cas de Statut.

H. Scrop. Suffrez qe le voucheour vienge en court. Et si le heir le baroun seit dedens age, donqe estes vous en cas de Statut.

Et la femme avoit de terre seisine.

40. ANON.[4]

Quare impedit.

Quare impedit fut porté vers plusors. La parole fut saunz jour par la mort le Roi.

Hedon. Nous demandoms jugement de la variance entre la resomons et le bref originel, pur ceo que le bref originel fut porté vers plusors et la resomons vers un.

Hervi. Le play est personel, et pur ceo il vous covent respondre a la disturbance, qe jeo pusse elyre le quel jeo voille porter vers un etc.

Et fut la resomons agardé bone etc.

[1] Text from *R.* [2] emtez *R.* [3] neste *R.* [4] Text from *R.*

Warwick [1] and *Hedon*. You are not in the statutory case, for the vouchor [2] is not the buyer etc.

[The voucher] stood.

39B. ANON.

A woman brought the *cui in vita* in the *post*. The tenant vouched to warranty. The vouchee appeared and vouched over, his vouchee being an infant within age.

Laufer. Sir, we pray seisin of the land by the Statute,[3] which says 'let the buyer await.'

Scrope. You are not in the statutory case, for the Statute gives aid only where the person who has entered by [the demandant's] husband vouches an infant; but here the writ is in the *post*. [And again, the present is a case of a second voucher.] So you are not within the Statute.

H. SCROPE, J. Permit this [second vouchee] [4] to come into court. Then, if the husband's heir is within age, you are in the statutory case.

And the [demandant] had seisin of the land.[5]

40. ANON.[6]

Variance between original writ and writ of resummons.

A *quare impedit* was brought against several. Owing to the King's death, the action stood without day.

Hedon. We pray judgment on a variance between the resummons and the original writ, for the original writ was against several and the resummons is against one.

STANTON, J. This is a personal action, so it behoves you to answer to the [charge of] disturbance; for I have my choice whether I will bring the writ against one [or more of the disturbers].

The resummons was adjudged good.

[1] Probably incorrect.

[2] Or perhaps 'vouchee.' The *tenant* is not 'buyer' from the husband.

[3] Stat. Westm. II. c. 40.

[4] But our manuscript gives 'vouchor.'

[5] It is difficult to reconcile our two reports.

[6] From a single manuscript.

41. ANON.[1]

Attornement sur une fine.

La ou homme conust certeyn services de un tenant qe tent de ly par fin levé en le court, si le tenant ne se attorne a cely a ky la fyn se leva en la vie le conisour, après la mort le conisour son heir put fere bon avowerie pur ceux services non obstante la fyn, qar la fyn est voide endreit de ceux services : par *Berr.* et *Hervi.*

42. RYVERE *v.* FRERE.

Monstravit de compoto ou il dit q'il fut son resceyvor en un counté, et le breve ala au vicounte d'autre counté, et le breve s'abatist.

(I.)[2] Un A. porta le *monstravit* vers W. et conta q'il fut resceyvore de ces deners en Botolf.

W. Jugement du breve, qe Botolf est en le conté de Nicol, et le breve va au vicounte de Everwyke, ou ceti breve devereyt estre porté en le conté ou il nous dit estre son resceyvoure.

Will. C'est un breve qe veut qe le corps seit prise, et ceo ne puit estre si non ou il est resseaunt. Jugement, si nostre breve ne seit assez bon.

Scrop. Naturel issu de ceo play est utlagerie si non comparuerunt et oportet q'il seit demandé et utlayé en le counté ou il fut resceyvour ou bayllif. Et d'autrepart, si nous pledassoms ovek ly et payse se joynereit, il covendreit qe nous eussoms payse du conté ou nous fussoms resceyvour, et ceo n'averoms pas si le breve ne alate[3] au vicounte de mesme le conté. Jugement.

Hervy. Pur ceo qe vous supposez par vostre breve et par conte qe A. fut vostre resseyvour en Botolf, q'est en le counté de N.[4] etc., et vous avez porté bref en le conté de E., si agarde etc. quod nichil per breve.

(II.)[5] Un A. porta le *monstravit de compoto* vers un B., et counta vers ly q'il fut son recevour de ses deniers en Batelston en le counté de Lincolne.

[1] Text from *R.* [2] Text from *S*; compared with *T.* [3] nabate *T.* [4] Nich. *T.* [5] Text from *R.*

41. ANON.[1]

Services granted by fine: necessity for attornment.

If a man by fine levied in court makes conusance to another of certain services of a tenant who holds of him [the conusor], and if in the conusor's lifetime the tenant does not attorn to [the conusee], then, after the conusor's death, his [the conusor's] heir can make a good avowry for these services, notwithstanding the fine; for as regards these services the fine is void: *per* BEREFORD and STANTON.

42. RYVERE *v.* FRERE.[2]

A writ of account is abatable unless brought in the county in which the defendant is said to have been receiver or bailiff.

(I.) One A. brought the *monstravit* against W. and counted that he was the receiver of his money in Boston.

[*The defendant.*] Judgment of the writ, for Boston is in the county of Lincoln, and the writ goes to the sheriff of York, whereas this writ ought to be brought in the county in which we are said to be his receiver.

Willoughby. This is a writ which directs that [the defendant's] body be taken, and that can only be done where he is resident. Judgment, whether the writ be not good enough.

Scrope. The natural issue of this plea is outlawry, if there is default in appearance. And he ought to be exacted and outlawed in the county in which he is receiver or bailiff. Besides, if we pleaded with him and inquest were joined, we ought to have an inquest of the county in which we were receiver, and that we shall not have unless the writ go to the sheriff of that county.

STANTON, J. Since you have supposed by your writ and your count that he was your receiver at Boston, which is in the county of Lincoln, and you have brought your writ in the county of York, the Court awards [that you take] nothing by your writ.

(II.) One A. brought the *monstravit de compoto* against one B. and counted against him that he was receiver of his money at Batelston in the county of Lincoln.

[1] From a single manuscript. See *Toftes* v. *Thorpe*, above, p. 71.
[2] Proper names from the record. We place together four reports.

Scrop. Par la ou il porte cesti bref en le counté de Cantebrige, il fut son recevoir en autre counté, et demandoms jugement de la variance.

Berr. S'il serreit utlagé pur la recette de deners, il serreit utlagé en le counté ou il fut recevoir de ses deners.

Par qey agardé fut qe le bref s'abati.

(III.)[1] Richard de la Kynere[2] porta le *monstravit* vers Stevene le Frere, et dit que, la ou il fust son resceyvour de ses deners a C. en le counté de Nichole.

Ingh. Et nous jugement du bref, que vaa au vicounte de Cauntebrige, de pus que[3] le resceit fust en le counté de Nichole; que, s'il ust esté utlagé, ceo serroyt en le counté ou il fust son resceyvour.

Lauf. Nostre bref est doné par statut, par quey la ou yl est demuraunt la deyt yl estre justisé.

Hervi. Pur ceo que le bref est variaunt a vostre counte, si agarde ceste court que vous ne prengez ren par vostre bref.

(IV.)[4] Un homme porta soun bref d'accompte.

Hengh. Yl ad counté q'il fuist soun resceivour de ses deners el countee de N. de taunt etc. et soun resceyvour de taunt el countee de C., et le bref va al vicounte de N. Par quey en droit de la resceyte el counté de C., nous prioms estre assoutz qaunt a ore.

Stant. Vous estes en court. Responez sy vous voilletz.

Hengh. Unqes soun receivour. Prest etc.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 32, Camb.

Andrew le Frere de Yclingham was attached by his body to answer Richard de la Ryvere[5] of London of a plea that he render him his reasonable account of the time when he was receiver of his money etc. Richard complains that, whereas Andrew on [19 Feb. 1310] Thursday next before the feast of St. Matthias the Apostle in 3 [Edward II.] at the vill of St. Botolph had received from Richard six casks of wine and two half cloths of ray (*stragulatos*) and a chest to be exposed for sale and to make the profit, of Richard out of the moneys thence arising, Andrew sold the same chattels for twenty-two marks, but of those moneys he did not render and still refuses to render his account: damages, ten pounds. (*Note continued on opposite page.*)

[1] Text from *L.* [2] *Or* Kyuere *L.* [3] qi *L.* [4] *Vulg.* pp. 70, 80. Text from *B.* [5] *Or* Rynere.

Scrope. Whereas he brings this writ in the county of Cambridge, [the defendant is said to have been] receiver in another county. Judgment of the variance.

Bereford, C.J. If he were to be outlawed for the receipt of money,[1] he would be outlawed in the county where he was receiver of the money.

So it was awarded that the writ should abate.

(III.) Richard de la [Ryvere] brought the *monstravit* against [Andrew] le Frere and said that he was receiver of his moneys at C. in the county of Lincoln.

Ingham. We pray judgment of the writ, for it goes to the sheriff of Cambridge, and the receipt was in the county of Lincoln. If there is to be outlawry, this must be in the county where he was receiver.

Laufer. Our writ is given by Statute,[2] and where he is resident there ought he to be 'justiced.'

Stanton, J. As the writ varies from your count, this Court awards that you take nothing by your writ.

(IV.)[3] A man brought his writ of account.

Ingham. He has counted that [the defendant] was his receiver in the county of N.[4] for so much, and his receiver in the county of C. for so much, and the writ goes to the sheriff of N. Therefore as regards the receipt in the county of C. we pray to be absolved for the present.

Stanton, J. You are in court. Be pleased to answer.

Ingham. Never his receiver. Ready etc.

Note from the Record (*continued*).

Andrew, after formal defence, says that he ought not to answer him thereof to this writ; for he says that, whereas Richard by his said writ supposed that Andrew was Richard's receiver in the said county of Cambridge, and in his count asserts that he received the said moneys in the said vill of St. Botolph, which is in the county of Lincoln, he [Andrew] prays judgment etc.

And Richard cannot deny this. Therefore it is awarded that Andrew go thence without day, and that Richard take nothing by his writ, but be in mercy for his false claim.

[1] Or rather for non-appearance.

[2] Stat. Marlb. c. 23; Stat. Westm. II. c. 11.

[3] This may tell of a different case. And the book which gives it also gives a very short note resembling the other reports.

[4] The N. may well stand for Nicole (Lincoln).

43A. BYGOT *v.* BELET.[1]

Cui in vita, ou l'assigné le purchasour en eschaunges usa excepcion d'eschanges pur barre.

Cui in vita, ou eschaungis furent aleggez : et ne fust pas receu, pur çoe qe il ne fust pas heir de saunk, ne il me moustra especialté qe ceo tesmoigne etc.

Un A. porta le *cui in vita* vers Roger Belet et demanda un mies et x. acres de terre ov les appurtenances en N., et dit en les quex il n'avoit entré si noun par Bertram Belet a qy un G. jadiz baroun E., qe heir il est etc. a qy ele en sa vie etc.

Denum. Actioun ne poet avoir, qar nous vous dioms qe Bertram, qe estat nous avoms, si dona iij. mies, x. acres de terre a les avantditz G. et E. sa femme, qy heir il est, en eschanges pur ceux tenemenz q'ore sont en demande ; par my quex eschanges ils furent seisiz ; et vous le jour de bref purchacé seisi de mesmes les eschanges. Et demandoms jugement.

Herle. Vous estes estrange a les eschanges, et avet conu la seisine nostre auncestre, et ne mostrez nul especialté coment vous estes avenuz a les eschanges. Et demandoms jugement et priom seisine de la terre.

Denum ut supra. Prist etc.

Herle. Al averement ne devez avenir, qar vous estes tut estrange a cely a qy les eschanges se firrent, qar jeo pose qe vous voderiez voucher par my les eschanges, vous ne serriez pas receu.

Denum. De meilour condicioun ne serra qe ne serreit sa miere si ele fut en pleyne vie. Mès si ele survesquit son baroun et de les eschanges se agreast, ele serreit barré. Et demandoms jugement depus qe vous demandez par my ly si actioun pusset avoir.

Berr. Posoms qe Roger Belet fut enpledé de un estrange de ceux eschanges par un bref de dreit, coment joyndreit il la mise ?

Scrop. Asset bien, conustre la seisine de les eschanges et se mettre en Dieu etc. le quel etc.

Denum mist avant un especialté qe Roger Belet avoit de son feffour.

[1] Text of this first version from *R.* Headnotes from *S* and *B.*

43A. BYGOT *v.* BELET.[1]

Husband and wife take Blackacre from *X.* in exchange for Whiteacre, which was held in the wife's right. *Qu.* whether, in an action by the wife's heir for Whiteacre, the exchange can be pleaded by *Y.*, an assign of *X.*, unless he can show specialty both for the assignment and for the exchange. *Semble* that no specialty is needed.

One A. brought the *cui in vita* against Roger Belet and demanded a messuage and ten acres of land with the appurtenances in N. and said 'into which he had no entry save by (*per*) Bertram Belet, to whom (*cui*) one G. sometime husband of E., whose heir [the demandant] is, demised them, [E. being unable to contradict G.] in his lifetime.'

Denom. Action you cannot have; for we say that Bertram, whose estate we have, gave three messuages and ten acres of land to the said G. and E. his wife, whose heir [the demandant] is, in exchange for the tenements that are now demanded; by means of which exchange they were seised; and you yourself were seised of the exchange on the day of writ purchased. We pray judgment.

Herle. You are a stranger to the exchange and have confessed the seisin of our ancestor; and you produce no specialty to show how you have come to the exchanged tenements. We demand judgment and pray seisin of the land.

Denom. Ready [to aver as above].

Herle. You ought not to get to that averment, for you are a total stranger to him to whom the exchange was made. Suppose that you wished to vouch by means of the exchange, you would not be received.

Denom. [The demandant] can be in no better position than that of his mother if she were alive. But, if she outlived her husband and agreed to the exchange, she would be barred. And, since you demand through her, we pray judgment whether you can have action.

Bereford, C.J. Put case that Roger Belet was impleaded by a stranger for the [tenements received] in exchange, how could he join the mise?

Scrope. Well enough. He could confess seisin of the exchange and put himself on God [and the grand assize] as to which [had better right].

Denom produced a specialty which Roger Belet had from his feoffor.

[1] For the proper names see our note from the record. We do not alter the fancy names given in the reports, since three Williams were concerned. For a similar case, see our vol. i. p. 142.

Berr. Il vaut meux qe vouch[er] etc.

Herle. Voucher ne deit il qar il plede a l'actioun. Et demandoms jugement tut atrenche si voucher deit qe ceo fallas consequent.[1]

Berr. Il ne fut nent avowé. Et d'autrepart vous ne demorastes mye la, par qey qe avantage de ceo ne poet prendre.

Denum. Nous vouchoms a garrant B. Belet etc.

Et le voucher fut receu.

43B. BYGOT *v.* BELET.[2]

Un A. porta soun *cui in vita* et dit qe le tenant n'ad entré sy noun par W. de C.[3] a qi J. soun baroun ceo lessa,[4] a qi ele en sa vie countredire ne pout.

Everwik. Les tenemenz furent en la seisine un W., le quel nous enfeffa et les heirs de nostre corps engendrez, et si nous deviassoms saunz heir, qe les tenemenz demorrassent a F. et a ses heirs. Et vous dyoms qe nous n'avoms pas de issue, mès le fee et le droit demoert en la persone F. Et prioms ayde de luy.

Stant. Dites outre.

Everwik. J. et A. sa femme donerent ceux tenemenz q'ore sount en demande a W. de C. en eschaunges pur autres tenemenz nomement pur iij. mees etc. Et vous dyoms qe vous après le decees vostre baroun entrastes[5] et einz estes et huy ceo jour seisi des eschaunges. Jugement, si vous puisset actioun avoir.

Herle. Yl nous bie rebouter d'actioun par resoun des eschaunges, et ceo ne puist estre, q'il n'est mye celuy a qi les eschaunges furent faites ne soun heir, ne il ne moustre nule chose a la court q'il est privé a lui. Jugement, si par cel r[espounse] nous puissetz barrer d'actioun.

Everwik. Nous sumes tenant des tenemenz, et issint assetz privee, et vous ne poietz dedire qe vous n'estes seisi des eschaunges. Jugement.

[1] fallas *in full*; consequent *represented by the sign for* con *followed by* nt. [2] *Vulg.* p. 70. Text of this second version from *B*: compared with *L.* [3] Will. Belle de C. *L.* [4] a qi [le] baron Alice mere mesme cesti A. qe heir etc. *L.* [5] diom qe vostre mere entra en mesme les tenementz qe ele prist en noun deschaunges apres la mort son baron lez tint et devia seisi apres qi mort vous entrastes com fitz et heir *L.*

Bereford, C.J. It would be better to vouch etc.[1]

Herle. He must not vouch; for he has pleaded to the action, and we peremptorily demand judgment whether he ought to vouch.[2]

Bereford, C.J. He [the tenant's counsel] was not avowed [by his client]. Besides, you did not demur there. So you cannot take advantage of that.

Denom. We vouch to warrant Bertram Belet.

Voucher received.

43b. BYGOT *v.* BELET.

One A. brought his *cui in vita*, and said that the tenant had no entry save by W. Belle, to whom John, husband of [the demandant's mother], demised, *cui in vita etc.*

York. The tenements were in the seisin of one William Belle, who enfeoffed us and the heirs of our body begotten, with remainder if we died without [such an] heir to F. and his heirs. And we say that we have no issue, and the fee and right remain in the person of F., and of him we pray aid.[3]

Stanton, J. Plead over.

York. [The demandant's mother and her husband] gave these tenements to William in exchange for others—to wit, three messuages etc. And we tell you that your mother[4] entered into these other tenements, and after her husband's death held them and died seised, and after her death you entered as son and heir and are this day seised. Judgment, whether you can have action.

Herle. He wants to rebut us from our action by reason of an exchange, and this he cannot do, for he is not the person with whom the exchange was made, nor his heir, and he shows nothing to the Court to make him privy to that person. Judgment, whether by this answer you can bar us from action.

York. We are tenant of the tenements and so privy enough. And you cannot deny that you are seised of the exchange. Judgment.

[1] The text seems to say the opposite; but apparently the *qe* should be omitted.

[2] The speech seems to end with some words about a fallacious consequence. They may represent an annotator's criticism.

[3] Of all this the other reports show no trace.

[4] Observe in the French text how one book attempts to simplify the facts. It supposes that the action is brought by the widow.

Ber. Yl vous dit qe vous n'estez my celui a qi les eschaungetz se firent, ne soun heir. Par quey vous ne poietz tiel r[espouns] doner.

Everwik. Yl nous fait privé par soun bref, qar il counte[1] bien qe nous entrames[2] par un W. nostre feffeur qe fuist partie a les eschaunges, et nous tenant des tenemenz, et vous huy ceo jour seisi des eschaunges.

Herle. Si W. fuist tenant des tenemenz et fuist empledé, yl nous poeit voucher par r[esoun] des eschaunges ; mès sy vous deveretz[3] voucher, il vous covendroit voucher W., et issint n'averetz my mesme l'avauntage come yl avereit. Jugement, desicome vous n'estes mye celui a qi vous dites eschaunges estre faites, ne son heir, ne autrement privé a lui, sy par cele excepcion nous puissetz barrer.

Everwik. Sy nous vouch[assoms] nostre feffour et il perdit,[4] nous n'averoms nul recoverir ver lui, pur ceo q'il n'ad ren.

Ber. Nous ne poms pas doner remedye a chescun meschief. Mès si vous fuissetz en bref de droit, purretz vous conustre la seisine W. a[5] qi vous dites les eschaunges estre faites et sur ceo joyndre la myse (*quasi diceret non*) ? Estre ceo, purretz vous voucher a garrant mesme celui (*quasi diceret non*) ? Par quei il vous escus'.[6]

Et puis il voucha a garrant son feffour. Et stetit advocatio.[7]

Et sic nota qe nul serra receu d'allegger eschaunges s'il ne soit celuy a qi les eschaunges se firent, ou son heir, et issint privee de saunge, ou q'il eyt especialté qe tesmoigne q'il est assigné celuy a qi les eschaunges se firent, et estre ceo especialté qe tesmoigne l'eschaunges etc.

43c. BYGOT *v.* BELET.[8]

A. porta breve de *cui in vita* vers B. et dit 'en les queux il n'ad entré si non par W. Boll[et] a qi R. jadis baron etc. qe[9] heir il est ceo lessa, cui ipsa etc.'

Herle. Vous ne devez action avere, qe William Boll[et], par qi vous nous dittes aver entré, fut seisi de certeinz tenemenz, des queux mesmes cest A., q'ore porte ceti breve, est huy ceo jour seisi, et dona mesmes ceux tenemenz a R. baron C., qi heyre el est, en eschaunges pur les tenemenz q'ore sunt en demande ; le quel R. fut seisi des les

[1] conust *L.* [2] estrames *B.* [3] devereietz *L.* [4] perdist *L.* [5] par *L.* [6] Par qei il piert qe vous estes estraunge *L.* [7] vocatio *L.* [8] Text of this third version from *S* : compared with *T.* [9] qi *T.*

Bereford, C.J. He tells you that you are not the person with whom the exchange was made, nor his heir. So you cannot give such an answer.

York. But he makes us privy by his writ, for he counts that we entered by William our feoffor, who was party to the exchange. And we are tenant of the demanded tenements, and you are this day seised of the exchange.

Herle. If William was tenant and was impleaded, he could vouch us by reason of the exchange; but if you had to vouch, you would have to vouch William, and so you cannot have the same advantage that he would have had. Judgment, whether you can bar us by this plea, since you are not he with whom, as you say, the exchange was made, nor his heir, nor otherwise privy to him.

York. If we vouched our feoffor and he lost, we should have no recovery against him, for he has nothing.

Bereford, C.J. Well, we cannot provide for every hard case. If you were in a writ of right, could you confess the seisin of William, who, so you say, was party to the exchange, and join the mise on this? No, you could not. And could you vouch him?[1] No, you could not. [So it is plain that you are a stranger.]

Afterwards [the tenant] vouched his feoffor, and the voucher stood.

So note that none can be received to allege an exchange, except the person with whom it is made, or his heir (who is privy in blood), or one who has a specialty showing that he is assign of the party to the exchange and also a specialty witnessing the exchange.

43c. BYGOT *v.* BELET.

A. brought a writ of *cui in vita* against B., and said 'into which he had no entry except by W. Bollet, to whom R., husband [of the demandant's mother], whose heir he is, demised, and whom etc.'

Herle.[2] You ought not to have an action, for William Bollet, by whom, so you say, we had entry, was seised of certain tenements, of which you are this day seised, and gave them to the husband [of her] whose heir you are, in exchange for the tenements now demanded;

[1] Apparently on the supposition that the tenant has no specialty from his feoffor.

[2] But in the rest of this report Herle appears for the demandant.

eschanges, et après son decès C. seisi des les eschanges en agreaunt etc., et il seisi huy ceo jour. Jugement, si actioun etc.

Herle. Q'estes [1] vous ?

Est. Assigné W. Bollet qe fit les eschaunges.

Herle. Et nous jugement, del oure qe vous estes [2] estrange a William Bolet due sank et estes estrange purchasour, si par cel excepcione nous puissez barrer.

Est. Nous vous dioms qe nous sumes assigné celi qi fit les eschanges. Par quai assez sumes privé de usere tiel response.

Herle. Si celi q'est assigné voleit voucher par les eschanges, il ne serra my r[ece]u : ergo nec a reboter.

Berr. Par quai ne vouchez vous celi par my qi vous avez estat ?

Est. Nous vouchoms etc.

Herle. Voucher ne poetz qe vous avez pledé al action.

Et il wayva son voucher et resorti a soun primer respouns.

Herle. Il ne fut unqes seisi après la mort sa mere issi q'il pout agreer. Prest etc.

Et alii econtra.

43D. BYGOT *v.* BELET.[3]

Un A. porta sun *cui in vita* vers B. e dist ' en les queux il n'ad entré si noun par Willem Belet jadis baron S. auncestre le dit A., a qi ele ne poeit en sa vie contredire.'

Everwyke defendit etc. et dist qe accion ne poet il avoir par la reson qe un G. de C. tient en la ville de N. un mees e x. acres de terre, pur les queux le dit Willem les tenemenz qe ore sunt en demande dona en eschanges, des queux eschanges la dite S. nostre [4] auncestre après le descès W. Belet entra e se agrea e tient a tote sa vie, après qi mort vous entrastes com fiz e heir e estes huy ceo jour seisi ; e demandoms jugement etc.

Herle. Qe estes vous qe usez ceste excepcion ?

Assigné S. qe fust partie a les eschanges, e veez icy l'escrit qe tesmoigne. (E mist avant l'escrit a la court.)

Herle. E nous jugement, desicom vous ne fustes mie partie a les

[1] Qest *S.* [2] *Om.* estes *S*, *T.* [3] Text of this fourth version from *Y*, f. 90d. [4] *Corr.* vostre.

and the husband was seised of the tenements given in exchange, and after his death his wife, agreeing [to the exchange], was seised, and you are this day seised. Judgment, whether you can have an action.

Herle. Who are you?

East. Assign of W. Bollet, who made the exchange.

Herle. Then we also pray judgment whether you can bar us by this plea, since you are a stranger in blood to William Bollet and are a strange purchaser.

East. We tell you that we are the assign of the man who made the exchange, so we are privy enough to use this plea.

Herle. If the assign wished to vouch in respect of the exchange, he could not be received, and neither can he be received to rebut us.

Bereford, C.J. Why do not you vouch the person by whom you have your estate?

East. We vouch etc.

Herle. You cannot vouch, for you have pleaded to the action.

(And he waived the voucher and fell back on his first answer.)

Herle. [The demandant] was never seised after his mother's death so that he could agree [to the exchange]. Ready etc.

Issue joined.[1]

43d. BYGOT *v.* BELET.

One A. brought his *cui in vita* against B. and said 'into which he has no entry save by William Belet, sometime husband of S. ancestor of A., whom in his lifetime she could not contradict.'

York defended and said: Action he cannot have, for one G. of C. held in the vill of N. a messuage and ten acres of land, for the which William gave in exchange the tenements now in demand; and [into] the exchange the said S. [your][2] ancestor after the death of W. Belet entered, and to it she agreed, and she held it all her life; and after her death you entered as son and heir and are this day seised. We demand judgment.

Herle. Who are you that use this exception?

[*York*].[3] An assign of [G.] who was party to the exchange, and see here the writing that witnesses it. (And he produced the writing to the Court.)

Herle. And since you were not party to the exchange, nor the

[1] The first and second reports end with a voucher that is allowed to stand. But the record supports this version.

[2] The manuscript says 'our.'

[3] In the French this appears as part of Herle's speech.

eschanges ne heir, jugement si par tiele excepcion nous poez de nostre accion barrer ou reboter.

Bereforde. Devant l'estatut le heir serroit chacé a sun bref de droit, mès il semble qe ceo serroit bone mise a conustre la seisine le auncestre e joindre la mise par my les eschanges.

Herle. Jeo vous r[espond], mès il ne serroit mie bone mise a conustre la seisine S. nostre auncestre e joindre la mise par my les eschanges qe se pristrent entre W. Belet e G., qi assigné B. est.

Everwyke. Uncore il semble qe accion ne puet il avoir, qar en la persone S. par mi le engreement accion fust esteynt; ergo en la persone sun heir qe de celes eschanges est seisi.

Herle. Que estes vous qe metez avant tiele excepcion? Fetes vous privé a les eschanges, e vous serrez r[espondu].

Everwyke. Tenant des tenemenz.

Bereforde. Plussours r[espounses] sunt en la bouche le garrant qe ne sunt mie en la bouche le tenant. E pur ceo entre vous veez en queu cas le tenant serra chacé a voucher a garrant, veut il ou noun.

Et postea *Everwyke.* B. vouche a garrant par aide de ceste court Alice, fille et heir W. Belet, qe deit estre sumonse etc.

Herle. A ceo voucher ne deit il avenir, car autrefoiz ount il excepcioné a nostre accion, par quei il ne atteindront mie a voucher etc.

Hervy. Vient[1] l'attourné le vouch'.

Herle r[espondit] com avant.

Hervy. Nous agardoms qe le voucher estoise, nient contre esteant la excepcion etc.

Et postea *W. Herle* le quint jour après rehersa la parole, e dist qe A. ne fust unkes seisi des eschaunges après le decès S. sa mere, e prest etc.

Et alii contrarium.

Et sic nota qe celui qe primes fust estrange par sun respons lui fist privé etc.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 186, Norf.

Ralph Bygot, by his attorney, demands against William, son of Gerard Belet, two messuages and seven acres of land in Marham as his right and inheritance, and as those into which William has no entry save by (*per*) William, son of William Belet, to whom (*cui*) William Belet, sometime

[1] *Corr.* veut *or* vienge (?).

heir of a party, we demand judgment whether by such an exception you can bar or rebut us from our action.

Bereford, C.J. Before the Statute [1] the heir would be driven to his writ of right, but seemingly it would be a good mise to confess the seisin of the ancestor and join the mise by means of the exchange.

Herle. I answer you that it would not be a good mise to confess the seisin of S. our ancestor and join the mise by means of the exchange between W. Belet and G., whose assign B is.

York. Once more, it seems that he cannot have action, for the action was extinguished in the person of S. by means of [her] agreement; and therefore is it extinguished in the person of her heir, who is seised of what was given in exchange.

Herle. Who are you to put forward such an exception? Make yourself privy to the exchange and you shall be answered.

York. Tenant of the tenements.

Bereford, C.J. Various answers lie in the mouth of a warrantor that do not lie in the mouth of the tenant. So consider among yourselves in what case the tenant, whether he wish it or not, will be driven to vouch a warrantor.

Afterwards *York* said: B. vouches to warrant by aid of this Court Alice, daughter and heir of W. Belet, who is to be summoned [in such a county].

Herle. To that voucher he cannot get, for before now they excepted to our action; so they shall not get to a voucher.

Stanton, J. Does the attorney desire the voucher? [2]

Herle answered as before.

Stanton, J. We award that the voucher stand, notwithstanding the exception.

And on the fifth day afterwards *W. Herle* rehearsed the pleading and said that A. was never seised of the exchange after the death of his mother, S.: ready etc.

Issue joined.

So note that he who at first was a stranger, by his answer made himself privy.

Note from the Record (*continued*).

husband of Margery, daughter of Walter of Marham, mother of Ralph, whose heir [Ralph] is, demised them, whom [*i.e.* William] Margery could not contradict in his lifetime. (*Note continued on next page.*)

[1] See Sec. Inst. 343. From this dictum, if rightly reported, it would seem that Bereford believed that the *sur cui in vita* was statutory. [2] Text doubtful.

Note from the Record (*continued*).

[The tenant], by his attorney, after formal defence, fully confesses that he had entry by the said William son of William; but he says that Ralph can claim no right in the tenements on the seisin of Margery; for he says that the tenements were sometime in the seisin of William Belet and Margery his wife, as of Margery's right, who gave (*dederunt*) the same to William, son of William Belet, to hold to him and his heirs in exchange for three messuages and four acres of land in the same vill, whereof William the son etc. enfeoffed William Belet and Margery, to hold to them and their heirs in exchange for the said two messuages and seven acres of land now in demand; and that William Belet and Margery were in seisin of the three messuages and four acres by the said exchange during the whole life of William Belet; and that after his death Margery, by accepting the exchange, continued her seisin in the said tenements and thereof died seised; and that after her death Ralph succeeded her in the said tenements

44. ANON.[1]

Forme de don en le descendere porté par iij., et ne furent pas r[espondu] quia unus infra etatem.

Treys soeres porterent[2] lour bref de forme de doun vers un A., et diseynt qe un A. fut seisi et dona mesmes les tenemenz a Jon lour piere et a les heirs etc., et les quex après la mort etc. a eux deivent descendre etc. par la forme etc. A. voucha a garrant un B., qe vynt en court et garrantit.

Laug.[3] La ou ces iij. seores portent cesti bref de forme de doun vers A., qe nous ad vouché, nous vous dioms qe une de eux est dedens age.[4] Et ceo est un bref de dreit en sa nature. Jugement, si duraunt son nounage deivent eux estre respondu.

Migg. Cesti bref nous est doné en leu de mordauncestre, et, tot fusoms nous dedens age, nous userioms bien nostre bref de mortdauncestre.[5] Jugement, si a cesti bref ne devoms estre respondu.

Laug.[6] Lour piere ne morust pas seisi de mesmes les tenemenz, par qey cesti bref en leu de mordauncestre ne vous put servir.

Denom.[7] Cestui bref ne vous sert mye en lieu de mortdauncestre synoun en cas ou vostre auncestre morust seisi. Mès nous voloms averrer qe vostre auncestre ne morust pas seisi. Jugement, s'il doivent estre receu.

[1] *Vulg.* p. 77. Text from *R*: compared with *B*, *S*, *T*. Headnote from *S*. [2] Un homme et ses iiij. parceniers *B*. [3] Launf. *S*. [4] les iiij. sount deinz age *B*. [5] *Om.* et tot . . . mortdauncestre *S*, *T*. [6] Lauf. *S*; Launf. *T*. [7] This and the next speech from *B* only.

Note from the Record (*continued*).

as son and heir and thereof was seised; and he says that he [the tenant] is the assignee of William, son of William Belet, of the two messuages and seven acres of land now in demand and so given to William son of William in exchange for the three messuages and four acres of land; and he prays judgment whether Ralph can have an action in this case to demand the tenements, the exchange for which descended to him by descent from Margery his mother, and of which [exchange] he [Ralph] was seised as aforesaid.

Ralph says that after Margery's death he was not seised of the three messuages and four acres of land by hereditary descent from Margery as [the tenant] says; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Michaelmas.

It will be observed that the tenant does not vouch, nor does he produce any specialty in proof of the assignment.

44. ANON.[1]

In a formedon in the descender the parole will demur until the full age of the demandant unless the ancestor of the demandant died seised.

Three sisters brought their writ of formedon against A. and said that one [X.] was seised and gave the tenements to John, their father, and to the heirs etc., and that after his death the tenements should descend to them by the form etc. A. vouched B. to warranty. He appeared and warranted.

Laufer. Whereas these three sisters bring this writ of formedon against A., who has vouched us, we tell you that one of them is within age. And this is in its nature a writ of right. Judgment, whether during her nonage they should be answered.

Miggeley. This writ is given to us in lieu of a mortdancestor; and we might well use our writ of mortdancestor although we were within age. Judgment, whether we ought not to be answered to this writ.

Laufer. Their father did not die seised of these tenements; so this writ cannot serve you in the place of a mortdancestor.

Denom.[2] This writ does not serve you in place of a mortdancestor unless your ancestor died seised. But we will aver that he did not die seised. Judgment, whether they should be [answered].

[1] This case is Fitz., *Age*, 133.

[2] Not all books give the whole of what follows. See the variants.

Migg. Autre bref ne puissoms avoir en le cas sy noun fourme de doun.

Berr. Si cely de qy vous pernet vostre title ne morust pas seisi, duraunt vostre nounage ne serret pas respondu. D'autrepart,[1] un enfant deinz age serra resceu[2] a un mordauncestre si celi de qi seisine il demande morut seisi et aliter non. Par qei si voillez estre eidé par ceti breve doraunt vostre nonage en leu de mordauncestre, covent dire qe vostre auncestre morust seisi.

Migg. granta qe la parole demorast tanqe a l'age cely q'est dedens age,[3] pur ceo q'il ne put mye averer qe lour piere morust seisi etc.

45. BARET *v.* SPAREWE.[4]

Atachement sur la prohibicion: excepcione de escumengement allegé encountre le demandant: et quia a la suyt le defendant, fut r[espond]u: ou le defendant gaga sa ley qe nient a sa seut.

Jon Baret sewy une attachement sur la prohibicion vers Thomas de P., et dit qe nent countreestaunt la prohibicion[5] il sewy vers ly en la court cristiane pur dette issi q'il a sa seute fut escumengé. Et counta parmy damages.[6]

Hedon. Il ne deit estre r[espondu], qar il est escumengé. (Et de ceo mostra la lettre l'evesqe.)

Roston. A ceo n'avendrez mye, qe de ceo qe nous sumes escumengé nous pernoms nostre action. Jugement, si par chose qe nous doune actioun pusset reboter nostre persone.

Hedon. La lettre ne testimoyne mye qe vous estes escumengé a nostre seute eynz par contumacie.

Roston. Qe a vostre seute escumengé. Prest etc.

Hedon. A ceo n'avendrez mye, qe la lettre testymoyne[7] le revers.

Hoc non obstante fut agardé par *Berr.* q'il deit outre.

Hedon. Qe nul play pus la prohibicion sewymes. Prist a fere etc.

Roston. A la ley etc.[8] qe vous avez mesme conu qe nous sumes escumengé, et nous voloms averer qe a vostre seute.

Et non obstante ceo la ley receu.

[1] *Om.* this sentence and next *R, B*; *ins. S, T.* [2] resceu *in full T.* [3] *Om.* the residue *S, T.* [4] Text from *R*: compared with *S, T.* Headnote from *S.* [5] *Ins.* le Roy *S, T.* [6] *Ins.* de xx. li. *S, T.* [7] tesmoygne *S.* [8] ne devez avenir *S, T.*

Miggeley. In this case we can have no other writ than a formedon.

Bereford, C.J. If he upon whose seisin you take your title did not die seised, you shall not be answered during your nonage. Besides, an infant shall be received in a mortdancestor only if he upon whose seisin he demands died seised. So, if you wish to treat this writ as being in lieu of a mortdancestor and you are under age, you must say that your ancestor died seised.

Miggeley consented that the parole should demur until the age of the infant, since he could not aver that the father of [the demandants] died seised.

45. BARET *v.* SPAREWE.[1]

Attachment for suing in Court Christian against prohibition. The defendant must answer though the plaintiff's excommunication is proved, it being alleged that the excommunication was at his suit.

John Baret sued an attachment upon a prohibition against [William Sparewe] and said that, notwithstanding a prohibition, he had sued against him for debt in the Court Christian, insomuch that at his suit he was excommunicated. And he counted for damages.

Hedon. He ought not to be answered, for he is excommunicated. (And he produced the bishop's letter.)

Ruston. To that you cannot get, for the excommunication is our cause of action. Judgment, whether you can rebut our person by that which gives us our action.

Hedon. The letter testifies that you are excommunicated, not at our suit, but for contumacy.

Ruston. Excommunicated at your suit. Ready etc.

Hedon. To that you cannot get, for the letter testifies the contrary.

Notwithstanding this, Bereford, C.J., bade him plead over.

Hedon. We sued no plea after the prohibition. Ready to make [our law].

Ruston. To your law you cannot get, for you have admitted that we are excommunicated, and we will aver that it was at your suit.

Nevertheless he was received to his law.

[1] Proper names from the record.

Note from the Record.

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 95, Linc.

William Sparewe de Birthorpe in mercy for divers defaults.

The same William was attached to answer John Baret of Horbling the elder of a plea why he sued a plea in Court Christian of chattels and debts which are not of (*que non sunt de*) testament or marriage against the King's prohibition. John, by his attorney, complains that, whereas William had drawn him into a plea in Court Christian before Master William de Langetoft, the official of the archdeacon of Lincoln, exacting from him twenty shillings of silver which are not of testament or marriage, and John on [5 March, 1309] Wednesday next before the feast of St. Gregory in A. R. 2 at Swaneton, in the presence of Walter Bronde and John, son of John Baret de Horbling, had delivered to William the King's writ of prohibition that he should not further sue that plea, nevertheless William, despising that

46. MULTON *v.* BURTON.[1]

Nota de novele diseisine ubi dominus appruavit vastum solom Stat. W[estm.] Sec. capitulo xlvj° et Stat. de Merton capitulo iiij°.

Jon de Multone[2] porta une assise de novele diseisine vers Robert de Bourtone[3] et autrez nomez etc., et se pleynt estre diseisi d'une place de more qe[4] content iiij.[5] perches de longeur et v. pees de leur en Masham.

Herle pur toux, estre Robert et autrez iiij., dit qe rienz n'avoit, et qaunt a Robert et les autrez iiij. dit qe fut lour comune, et eux la userount sanz tort fere.

{*Herle*[6] pur touz, estre R. et iiij. autres, q'il avoynt fet noil tort etc. Qaunt a Richard, dit il, qe Roger de Moubray fut en ascun tens seignour de Masham, qe dona a une Johane fiz Estevan tant ov les apurtenances, a quai comune en mesme la more etc. Par quel doun il fut seisi a comuner en tel[7] tens, grant tens avant qe Johane rien avoit en Masham. Et il mesmes seisi de la comune. Dont pur ceo qe Johane le voleit aver forclos de la comune, il vient et usa la comune saunz autre tort fere. Les autres iiij. respondirent par baillif et diseint qe ceo fut lour comune et qe il la userent saunz tort fere etc.}

War. Jon est [seignour de Masham, et par statut le seignour se

[1] Text from *R*: compared with *S*, *T*. Headnote from *S*. [2] Waltone *S*, *T*. [3] R. de Burtone *S*, *T*. [4] *Om.* qe *R*. [5] xxiiij. *S*, *T*. [6] In *S*, *T* this takes the place of the preceding speech. [7] cele *T*.

Note from the Record (*continued*),

prohibition, did further sue that plea in the same Court Christian until sentence of excommunication etc., against the prohibition etc.: damages, a hundred pounds.

William, by his attorney, after formal defence, says that he never sued the said plea in Court Christian against the King's prohibition; and this he is ready to defend against him and against his suit as the Court shall award.

Therefore it is awarded that he wage him his law twelve-handed; and let him come here with his law on the quindene of Michaelmas. Pledges of the law: Simon de Cranesle, of the county of Northampton, and Robert de Hedon, of the county of York. And William's attorney is told that he cause his said master (*dominum*) to come at the said term to make his law etc.

46. MULTON *v.* BURTON.[1]

Qu. whether a lord can 'approve' common without enclosing it. In opposition to a grant of common in gross an ineffectual attempt is made to assert a prescriptive right of approving.

John of Multon brought an assize of novel disseisin against Robert of Bourton and others named in the writ etc., and complained that he was disseised of a piece of moor containing four[2] perches in length and five feet in width in Masham.

Herle, for all except Robert and four others, 'They have done nothing'; and for Robert and the other four, 'It was their common and they used it without doing wrong.'

{*Herle*[3] for all except Robert and four others, 'No tort.' As to [Robert] (said he), Roger de Mowbray was at one time lord of Masham and gave to John fitz Stephen so much [land] with the appurtenances, to which common in the said moor [pertained]. And by this gift he was seised of commoning at that time and a long time before [the plaintiff] had anything in Masham. And he himself [the defendant Robert] was seised of the common. And because [the plaintiff] would have excluded him from the common, he came and used the common without doing wrong. The other four defendants answered by bailiff that it was their common and that they used it without doing wrong.}

Warwick. John is lord of Masham, and by Statute a lord may

[1] This case seems to be Fitz., *Comen*, 21. Proper names uncertain.

[2] Or 'twenty-four.'

[3] In some books this appears instead of the preceding speech.

pout aprouwer sauve etc. Et vous dioms [1] q'ils ount suffisante pasture estre cele place. Par qey par forme de statut nous nous aproweroms,[2] et Robert et les autrez ount desturbance,[3] et prioms l'assise.

Ston.[4] Aprowement de wast est [5] la ou homme prent une place de la comune et la tent en severalté, ou covent [6] qe cele place seit enclose.[7] Dount s'il veut dire q'il se approwe,[8] dount cele place est enclose.[9]

Herle. Aprwement de wast est naturement la ou home prent [10] de la comune et tient en severalté, et veut etc. naturement de terre qe seit entre blés.[11] Et vous dioms qe ceo q'il appelent approwement ne fut forqe un fosse fet pur [12] nous forclore de la [13] comune, dount nous abatimes et nostre comune usames.

War. Et nous jugement, del oure qe nous sumes seignour et vous nostre tenant, ou nous approwames com bien nous lust par statut, et vous avet conu la desturbance. Par qey nous prioms l'assise de damages.

Wilby. Roger de Moubray fut seignour de Masham par conquest, qe nous enfeffa de Bartone [14] ove les apportinaunces, et nous granta parmy totte la foreste de W. et la proceinte a comuner,[15] et pus dona la seignourie a Jon de Multone.[16] (Et demanda jugement si assise deyve estre et myst avant fet qe ce testmoyna.[17])

War. Nos auncestres se ount aprowé de temps etc. en cele more, par qey n'entendoms mye qe par cele chartre pusset estre eydé.

Berr. Se ount il approwé de cele place dount vous pleynet ?

War. Sire, nanyl, mès aillours en la more.

Ing. Pledet a cele place dount vous pleynetz estre diseisi, qar ceo qe vos auncestres ount aprowé par cas put [18] estre desaprowé.

War. Nous entendoms qe cele comune ne put il clamer estre un gros [19] depus ne le fet ne veut [20] a certain nounbre de avers ne a toux les [21] avers.

Hervi.[22] Le fet est plus large qe n'est vostre interpretacioun, qe si R. de M. fut seignour de Masham ou son heir [23] ne sey pout

[1] *Ins.* qe cest more content iiij. xx. acres issi *S*, *T*. [2] appruames *S*, *T*. [3] nous ount disturbe *S*, *T*. [4] Scrop. *S*, *T*. [5] *Ins.* proprement *S*, *T*. [6] dont il coveynt *S*, *T*. [7] enchose *R*. [8] aprua *S*; *sim. T*. [9] enchose *R*; dunqe fut la place enclos *S*, *T*. [10] purprent *S*, *T*. [11] et issint qe la prise naturelement seit terre arable *S*, *T*. [12] par *R*. [13] nostre *S*, *T*. [14] Burtone *S*, *T*. [15] de W. et totam provinciam aver *S*, *T*. [16] Waltone *S*, *T*. [17] qe tem. per totam provinciam *S*, *T*. [18] sunt par cas apprue puit *S*, *T*. [19] clamer com grosse *S*. [20] *Ins.* ne *S*, *T*. [21] ces *S*, *T*. [22] Heng. *S*, *T*. [23] *Ins.* il *S*, *T*.

approve, saving [sufficient] etc. And we say that they have sufficient pasture outside this place,[1] and so by the form of the Statute we approved, and Robert and the others disturbed us. We pray the assize.

[*Scrope.*] Approvement of waste is where a man takes a place from the common and holds it in severalty, and the place must be enclosed. So, if he wishes to say that he approved, the place must be enclosed.

Herle. Approvement of waste is by its very nature where a man takes from the common and holds in severalty, and naturally implies that the land is cultivated. And we tell you that this so-called approvement was only a dike dug to shut us out from the common, so we abated it and used our common.

Warwick. We too pray judgment, since we are lord, and you are our tenants, and we approved, as by Statute well we might, and you have admitted the disturbance. So we pray that the assize may pass for damages.

Willoughby. Roger of Mowbray was lord of Masham by conquest, and enfeoffed us of Burton with the appurtenances, and granted us common throughout the forest of W. and the precinct, and afterwards gave the seignory to John of Multon. (And he prayed judgment whether there ought to be an assize, and he produced a charter that witnessed this.[2])

Warwick. Our ancestors have approved in this moor from time [immemorial], so we do not think that by this charter you can be aided.

Bereford, C.J. Have they approved the place as to which complaint is now made?

Warwick. No, Sir, but elsewhere in the moor.

Ingham. Plead then about the place of which you complain that you are disseised; for peradventure what your ancestors have approved may be 'disapproved.'[3]

Warwick. We think that he cannot claim this common as a gross, since the deed does not mention a certain number of beasts or say for all his beasts.

Stanton, J. The deed is wider than your interpretation. If Roger de Mowbray was lord of Masham he could not approve against

[1] Some add, 'for this moor contains four-score acres.'

[2] Or 'that testified [a grant of common] throughout the whole *provincia*.'

[3] That is, the approvement may be undone. There is no play upon words. A confusion between *appruare* and *approbare* hardly belongs to this time.

aprower encountre son fet, et vous ne devez estre de meillour conditioun q'il ne serreit. Par quey agarde la court qe vous prengnez riens par vostre bref, eynz en la mercy.

47. ANON.[1]

Annueté pro Abbate, ou il demanda les arerages vers l'eyre du tens le ael et le pere le defendant, et fut respondue.

Un bref de annuité fut porté[2] vers un A. et counta vers ly qe a tort etc. xl. s. qe arere ly sount d'une annuité de xij. d. par an, et pur ceo a tort qe la ou un tiel son ael, qe heir etc., granta l'annuité avantdite a un Watier predecessor mesme cesti Abbé et a son covent etc. a recevere de sa chambre et de les chambres ses heirs, par my quel doun et grant mesme cely Watier fut seisi tauntqe a xl.[3] aunz avant cesti bref purchacé, dount plus sovent etc. il etc. a tort et ses damages etc.

Scrop. Jugement du counte, q'il ad counté qe nostre ael se obliga en ceste annuité a receyvre de sa chambre et de les chambres ses heirs, ou ley ne suffre poynt qe homme pusse charger choses q'il n'ad poynt,[4] et depus qe le ael n'avoit poynt la chambre son heir, qar a donqe ne fut poynt, n'entendoms mye qe a tiel demostraunce deivent estre receu.

Toud. Nous avoms dit deux choses, scil. qe vostre ael charga ly et ses heirs et sa chambre et les chambres ses heirs, dount conisset si ceo seit le fet vostre auncestre comprenant l'un et l'autre, ou dediet.

Berr. ad idem. S'il demandast ceste annuité soulement par reson de les chambres, vostre r[espons] lierreit. Mès si il dit qe vostre auncestre granta pur ly et pur ses heirs etc. et vous veut lyer com heir du sank et ov ceo qe vous avetz par descente. Par qey responez outre.

Toud.[5] Vostre ael ne obliga pas le franctenement dont vous

[1] Text from *R*: compared with *S*, *T*. Headnote from *S*. [2] Labbe de W. porta breve de annuite *S*, *T*. [3] xlij. *S*, *T*. [4] la chambre son heir en supposant qil purra charger autri tenance ou comune ley ne seoffre pas *S*, *T*. [5] Substitute for last two speeches *S*, *T*.

his deed, nor could his heirs, and you ought not to be in a better condition than his. Wherefore the Court awards that you take nothing by your writ, but be in mercy.

47. ANON.

An annuity deed is upheld, though it contains words purporting to charge the 'chambers' of the grantor's heirs. Action for an annuity upheld against an heir for arrears incurred in his ancestor's time.

A writ of annuity was brought [by an abbot] against one A., and he counted that [the defendant] wrongfully [detains] forty shillings which are arrear of an annuity of twelve pence a year: and wrongfully, for that his grandfather, whose heir [he is], granted the said annuity to one Walter, predecessor of this abbot, and to his convent etc., to receive from his chamber and the chambers of his heirs,[1] by means of which gift and grant this same Walter was seised until forty[2] years before the purchase of this writ, wherefore he often [asked for payment, but the defendant refused], wrongfully and to his damage etc.

Scrope. Judgment of the count, for he has counted that our grandfather bound himself in this annuity to be received from his chamber and the chambers of his heirs, whereas the law will not suffer a man to charge things that he has not got[3]; and the grandfather had not the chamber of his heir, for at that time it did not exist; and so we do not believe that to such a declaration they ought to be admitted.

Toudeby. We have said two things: [first] that your grandfather charged himself and his heirs: [secondly] that he charged his chamber and the chambers of his heirs: so confess whether this be your ancestor's deed containing both these points.

Bereford, C.J., to the same effect. If he demanded this annuity only by reason of the chambers, your answer would be valid. But he says that your ancestor granted for himself and his heirs etc., and desires to bind you as heir of blood and as having [assets] by descent.

{*Toudeby.*[4] Your grandfather did not [endeavour to] oblige the

[1] As to these 'cameral rents,' see Pollock and Maitland, 'Hist. Eng. Law,' ii. 132.

[2] Or 'forty-two.'

[3] Or 'supposing that he could charge the tenancy of another, which common law will not permit.'

[4] An alternative for the last two speeches.

fustes seisi le jour del obligacion fet, mès pur chose qe fut a venir par ly ; et avoms dit qe vous estes son heir et avez par descente.

Berr. Son counte est acordaunt a son fet.}

Scrop.[1] Uncore jugement de vostre counte, qe il dit qe nostre ael granta estre tenuz etc., par quel grant il nous bie lyer a ceste annuité ensemble ov toux les arrierages encorus en temps nostre piere, ou il pout avoir son recoverer vers les executors.[2] Jugement.

Toud. Coment put homme recoverer les arrierages d'une annuité par bref de dette saunz ceo qe l'annuité fut esteynt ?

Scrop. Ceu counte est foundu sur deux choses,[3] une qaunt al annuité, l'autre qaunt a les arrierages, qe naturement voillent estre demandez vers executors par bref de dette. Jugement etc.[4]

Berr.[5] Vous dites mal, qar ceo est une actioun q'est a recoverir l'annuité, q'est principal, ove les arrierages. Pur qey responez.

Scrop. Jugement du bref qe va a vicounte de N.,[6] ou il ad counté qe contrat se fit a R., q'est en le counté de Lincolne,[7] ou cest bref irreit a vicounte del leu etc.

Toud. Vous n'abaterez pas un bref de dette par tiel excepcion. Nent plus par de sa, qar la court dorra a l'un et a l'autre une mesme execucion, scil. le *fieri facias*.

Berr. Cesti bref est tot autre d'un[8] bref de dette, qe ceo est une rente perpetuele, par qey homme prendra regarde a leu ou la charge comensa.

Hervi.[9] Si ceo fut une annuité pur terme de vie, aukun serreit ; mès ele est perpetuele etc.

Herle. Tut seit l'annuité perpetuel, ne se fra le recoverer mesqe en deners cum chatel.

Wilby. Sa chambre est chargé,[10] et il demort en la counté de Notingeham, et sa chambre est la ou il demort, et nous avoms porté nostre bref a vicounte de Notingeham. Jugement etc.

Denum. En un *monstravit* homme portera bref a vicounte du counté ou il fut baillif.

Et *non obstante* le bref agardé bon par *Berr.*[11]

Denum. Unqes seisi. Prest etc.[12]

[1] The parallel speech is attributed to Denom, *S*, *T*. [2] *Ins.* ceus qe cesserent naturelment per bref de dete *S*. [3] Ceo coveynt estre par un de deux voys *S*, *T*. [4] si a conte qest fondu sur deux actions deive estre r[espondu] *S* ; *sim.* *T*. [5] Parallel speech attributed to Herle, *S*, *T*. [6] Stot. *S* ; Not. *T*. [7] Nich. *T*. [8] den' *R*. [9] *Om.* this and next speech *S*, *T*. [10] chalange *S*, *T*. [11] *Om.* par Berr. *S*, *T*. [12] *Ins.* Et alii econtra *S*, *T*.

freehold of which you were seised when the obligation was made, but only something which was to come from him [to you] thereafter. And we have said that you are heir and have [assets] by descent.

Bereford, C.J. His count accords with his deed.

Scrope. Once more, judgment of your count; for he says that our grandfather granted to be bound etc., and by that grant he hopes to bind us to this annuity together with the arrears incurred in the time of our father, whereas he could have his recovery against the executors [by writ of debt]. Judgment.

Toudeby. How could a man recover the arrears of an annuity by writ of debt, unless the annuity were extinct?

Scrope. This count is founded on two matters, the annuity and the arrears; and naturally [the arrears] should be demanded against the executors by writ of debt. Judgment etc.[1]

Bereford, C.J.[2] That is not correct. This is an action to recover the annuity, which is the principal thing, along with the arrears. So answer.

Scrope. Judgment of the writ, for it goes to the sheriff of N[ottingham], whereas he has counted that the contract was made at R., which is in the county of Lincoln; and this writ should go to the sheriff of the place etc.

Toudeby. You could not abate a writ of debt by such a plea. No more shall you abate this writ, for the Court in both cases would grant the same execution, namely, the *fieri facias*.

Bereford, C.J. This writ is wholly different from a writ of debt, for this is for a perpetual rent, and we must have regard to the place where the charge commences.

Stanton, J.[3] If it were an annuity for life, there would be something [in what you say]. But this annuity is perpetual etc.

Herle. Albeit the annuity is perpetual, will not the recovery be wholly in money like a chattel?

Willoughby. His chamber is charged, and he lives in the county of Nottingham, and his chamber is where he lives, and we have brought our writ to the sheriff of Nottingham. Judgment etc.

Denom. In a *monstravit* [writ of account] one should bring the writ to the sheriff of the county where [the defendant] was bailiff.

Nevertheless the writ was adjudged good by Bereford, C.J.

Denom. Never seised. Ready etc. (Issue joined.)

[1] Some say, 'Judgment whether he should be answered to a count that is founded on two actions.'

[2] Some books attribute this to Herle.

[3] Some books omit this speech and the next.

48. BOTILLER *v.* VIVONIA.[1]

Wast, ou relez d'accion fut mis encountre etc.

Johan de Botiller et E. sa feme porterent lour bref de wast vers C.

Herle. Toutz les tenementz que A. tent en noun de garde del heritage B. sont en Herdwike ; et de ceo ne poez action avoir, quar vous mesmes avez relessé etc. tote maners d'acciouns que vous poez avoir par reson de wast. Jugement.

Kyng. A cest fet n'avoms mestier a respoundre, que nous pleygnoms de wast fet en S., et il mettent relees de wast fet en H.

Herle. Nous n'avioms unques ren en noun de garde en S. del heritage B., et ceo voloms averer etc.

Kyng. Vous n'avez nul garraunt a pleder de wast fet en H., et nous voloms averer q'il ad fet wast dez tenementz que ele[2] tent en garde de[3] S. Jugement.

Staunt. Put estre que S. est H. Et outre ceo, dit il q'il n'avoyt unques ren en noun de garde en S., mès en H., et a ceo met il avant fet a vous barrer de action. Quai responez a ceo ?

Kyng. Nous vous dioms que S. et H. sount divers villes, et il y ad fet wast dez tenementz q'il tient en S., a quai vous ne responez nent.

Scrop. Vous ne prendrez tiel issue en cesti bref ' precipe quod reddat ' a prendre un averement lez queux lez tenementz soyent en une ville ou en autre, q'il[4] issue prendreit le plee, eynz covient issue prendre sur le fet.

Kyng. Nous volom averer q'il tient lez tenementz en S. et fist wast auxi com nostre bref suppose ; a quai il ne respoundent nient. Jugement, que dez tenementz en H. n'avez nul garraunt.

Herle. Nous n'avioms unques nul tenementz en noun de garde del heritage B. si noun en Herdwike etc.

[1] Text from *L*. [2] *Sic L*. [3] *Corr.* en. [4] qil *L* ; *corr.* quel (?).

48. BOTILLER *v.* VIVONIA.[1]

Charged with waste in S., a guardian produces a release for waste in H. and pleads that, except in H., he held nothing in wardship.

John le Botiller and Beatrice his wife brought a writ of waste against [Joan].

Herle. All the tenements that [the defendant] holds by way of wardship of [Beatrice's] inheritance are in Hardwick; and concerning them you can have no action, for you yourselves have released etc. all manner of actions that you can have by reason of waste. Judgment.

Kingeshemede. To this deed we have no need to answer; for we complain of waste done in S., and they produce a release of waste done in H.

Herle. We never had anything in S. by way of wardship of [Beatrice's] inheritance, and this we are ready to aver.

Kingeshemede. You [justices] have no warrant for [holding plea] of waste done in H.[2]; and we will aver that she has done waste of tenements that she holds in wardship in S. Judgment.

Staunton, J. Perhaps S. is H. Moreover, she says that she never had anything by way of wardship in S., but only in H., and as to that she produces a deed to bar you from action. What say you to that?

Kingeshemede. We say that S. and H. are different vills, and that she has made waste of tenements that she holds in S.; and to that no answer is made.

Scrope. In this writ of *praecipe quod reddat* you cannot take issue on such an averment as to whether lands are in one vill or another. For what issue of the plea would there be?[3] You must take issue on the deed.

Kyngeshemede. We will aver that she held the tenements in S., and did waste as our writ supposes. To this they do not answer. Judgment, for concerning tenements in H. you have no warrant.

Herle. We never had any tenements by way of wardship of [Beatrice's] inheritance except in Hardwick etc.

[1] Proper names from the record. This case we find in only one book.
[2] Because the writ speaks only of waste in S.
[3] The punctuation is uncertain.

Kyng. Que vous aviez[1] tenementz en S. solom ceo que nostre bref supposse. Prest etc.

Et alii econtra etc.

Note from the Record

De Banco Roll, Easter, 3 Edw. II. (No. 181), r. 153d, Glouc.

Joan de Vivonia was summoned to answer John le Botiller de Lanultyt and Beatrice his wife of a plea why she made waste, sale, and destruction of the houses and woods which she has of the inheritance of Beatrice in Shirreveharsefeld, to the disherison of Beatrice etc. John and Beatrice, by Walter Torell their attorney, complain (*queritur*) that, whereas Joan had in wardship a messuage, two carucates of land, and forty acres of wood in the vill of Shirreveharsfeld, of the inheritance of Beatrice, Joan made waste, sale, and destruction in those tenements, by pulling down a hall, price three hundred pounds, three chambers, price a hundred pounds apiece, a kitchen, price forty pounds, a granary, price forty pounds, a chamber over the gate, price thirty pounds, and a stable, price thirty pounds, and by felling and selling a hundred oaks, price twenty shillings apiece, to the disherison of Beatrice : damages, a thousand pounds.

Joan, by Michael de Pykumbe her attorney, after formal defence, says that the tenements that she had in wardship of the inheritance of Beatrice are in Herdewyk[2]; and she says that for the waste, if any were done in those tenements, no action is at present competent to John and Beatrice, for that John by his writing granted himself to be held and bound for

49A. RASEN *v.* FURNIVAL.[3]

Forme de doun en le discendre, ou le tenaunt dit qe le demaundaunt entra après la mort le donour com fille et heir et avoit fee simple.

Forme de doun en le descendre, ou le dreit de la reversion descendi a mesme le issu.

Descendere, ou le doun se fist a homme e sa femme en fee taillé ; pus la femme devynt le heir le donour, e sun barun morust e ele prist autre etc.

Une Alianore porta sun bref de forme de doun vers B. e dist qe atort lui deforce un mies e une carué de terre ove les appurtenances en C., dont un Jordan Denkeley en fu seisi com de fee e de droit e qe hors de sa seisine dona mesme les tenemenz a Michel e Alice sa femme e les heirs de lour corps issantz ; par queu doun M. e A. furent seisiz en lour demene com de fee e de droit par la forme avantdite en

[1] *Om.* aviez *L.* [2] Hardwicke and Haresfield are adjoining vills. [3] Text of this first version from *Y* (f. 107d). Headnotes from *B*, *S*, *Y*.

Kyngeshemede. You had tenements in S. as our writ supposes. Ready etc.

Issue joined.

Note from the Record (*continued*).

himself and his heirs etc. (if it should happen that Joan should be impleaded or in any way called in question (*occasionari*) for any wastes, conflagrations (*incendiis*), injuries, or any manner of trespasses done in Herdewyk by reason of the lands and tenements of Beatrice, daughter and heir of William du Park, while those lands and tenements were in the wardship of Joan by reason of the minority of Beatrice), to acquit and defend Joan and keep her harmless in all the said matters if she should be impleaded or called in question for the same by Beatrice in her life, or by anyone in the name of Beatrice while she is under age ; and she produces a writing under the name of John, which witnesses this ; and she says that she had in ward of the inheritance of Beatrice nothing save in the vill of Herdewyk, as is contained in the said writing ; and this she is ready to aver ; and thereof she demands judgment.

And John and Beatrice say that Shyrreveharsefeld and Herdewyk are two vills, so that each of them is a vill by itself ; and they say that the said tenements in which they complain the waste to be made are in Shirreveharsefeld and not in Herdewyk ; and they pray that this may be inquired of by the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Michaelmas.

49A. RASEN *v.* FURNIVAL.[1]

A question concerning the merger of an estate tail owing to the descent of the reversion in fee simple to the tenant in tail is raised and discussed ; but ultimately the gift in tail is denied. *Qu.* whether in counting in formedon it is correct to deduce title through one who did not live to attain an estate.

One Alianora brought her writ of formedon against B. and said that wrongfully he deforces her of a messuage and carucate of land with the appurtenances in C., whereof one Jordan [of Treeton] was seised as of fee and of right, and out of his seisin gave the tenements to Michael and Alice his wife and the heirs of their bodies issuing ; by which gift Michael and Alice were seised in their demesne as of fee and of right by the form [of the gift] aforesaid, in time of peace etc.,

[1] Proper names from the record. We comment on this case in our Introduction.

temps de pees etc., les espleez en prist par la forme avantdite. De M. e A. desc[endy] etc. a Johan com a fiz e heir par la forme etc. De Johan, pur ceo q'il morust etc.,[1] a Alianore com a soer e heir. E s'il voet dedire etc.

Pass. defendy e dist qe accion ne poeit il avoir par cesti bref, pur ceo qe le bref dist 'quod post mortem predictorum M. et A. et Johannis filii eorundem prefate[2] A. sorori et heredi descendere per formam etc.,' vous dioms qe celui J., de qi ele prent sun title par bref e par bouche, unkes ne tendi estat, ne unqes ne fust de ceux tenemenz seisi. E demandoms jugement. E si ele voet dedire, prest del averer. (De quoi multi mirabantur, desicom cestui est un bref de droit e de possession; e en un bref de droit il covent sercher chescon gute du saunke pur avoir la descente bone. Et en bref de possession, tut fet homme mencion de celui qe ne tendi unkes estat, pur ceo le bref nel counte ne se abateront mie. Mès, ut credo, fust pur ceo qe le bref dist 'que post mortem predictorum M. et A. et J. filii eorundem' et issi owelement prendre sun title del frere cum del pere et la mere etc.)

Ad alium diem venerunt predicte partes, et *Herle* dist: Coment q'il dient qe Jordan Denkeley dona ceux tenemenz a Michel e Alice sa femme e a les heirs de lour corps etc., le quel nous ne grantoms mie, vous dioms qe cele Alice fu fille e heir Jordan, que survesqui Michel sun baroun, e pus se lessa marier a un Gervase, e ceux tenemenz tiendereint com fee simple e engendrerent un fiz Richard par noun; le quel Gervase survesqui Alice e tient ceus tenemenz par la lei d'Engleterre a tote sa vie. Après qi mort, Richard com fiz e heir Alice entra e aliena devant le statut. E demandoms jugement, si Alianore en les ditz tenemenz par forme taillé puisse accion avoir.

Frisq. Conissez la taille primes, e seoms en jugement.

Herle. Nous n'avom mestier a conustre ne a dedire, qar nous dioms qe Alice fu fille e heir Jordan Denkeley, e prest del averer.

Frisqency. Nous vous dioms qe Jordan Denkeley dona ceux tenemenz a Michel e Alice e a les heirs etc., le quel Michel engendra de cele Alice un Johan e ceste Alianore qe ore demande; le quel Johan survesqui M. e A., par my qi mort accion est acru a ceste Alianore par la forme avauntdite. E demandoms jugement etc. S'il velint dedire, prest etc.

[1] *Om.* etc. *Y.* [2] *Partially corrected from* ad prefatam *Y.*

by taking esplees, by the form [of the gift] aforesaid; and from them it descended etc. to John, as son and heir, by the form [aforesaid]; and from John, since he died [without an heir of his body] to Alianora as sister and heir. If he will deny etc.

Passeley defended and said: Action by this writ she cannot have; for the writ says 'which after the death of the said Michael and Alice and John their son [ought to] descend to the said Alianora as sister and heir by the form etc.'; and we tell you that this John from whom she takes title by writ and mouth never attained an estate and never was seised of the tenements. Judgment. If she will deny, we are ready to aver. (As to this many wondered, for this is a droiturel as well as a possessory writ, and in a writ of right one must search for every drop of blood in order to make a good descent; and in a possessory writ, if one makes mention of a person who never attained an estate, this will not cause an abatement of writ or count. But I believe that [Passeley objected] because the writ in saying 'and which after the death of Michael and Alice and John their son' seemed to take title from the brother equally with the father and mother etc.)

On another day the parties came and *Herle* said: Although they say that Jordan gave these tenements to Michael and Alice his wife and the heirs of their bodies—which we do not admit—we tell you that this Alice was daughter and heir of Jordan and survived Michael her husband, and then married one Gervase. They held the tenements as fee simple and engendered a son, Richard by name. Gervase survived Alice and held by the curtesy for the whole of his life. On his death Richard entered as son and heir of Alice and alienated before the Statute [*de donis*]. We demand judgment whether Alianora can have an action for the tenements by the 'tailed form.'

Friskeney. First confess the 'tail,' and let us abide judgment.

Herle. We have no need to confess or deny it, for we say that Alice was daughter and heir of Jordan; ready to aver it.

Friskeney. We tell you that Jordan gave the tenements to Michael and Alice and the heirs [of their bodies]; and that Michael of this Alice engendered one John and Alianora, the demandant; and that John survived Michael and Alice; and that by his death action accrued to [the demandant] by the form [of the gift] aforesaid. And we demand judgment etc. If they will deny, ready we are etc.

49B. RASEN *v.* FURNIVAL.[1]

Une Annore porta bref de fourme de doun en le *descendere* vers T. de Furnival[2] et demanda etc. des[3] tenemenz les queux un Jordan dona a Michael et Alice et a lour heirs de lour deux corps engendrez, et les queux après la mort M. et A. et J.[4] a ceste A.[5] come as[6] soer et heir descendre deyvent par la fourme etc.[7]

Herle. Vous avietz conté par my un J.; nous voloms averrer q'il n'y avoit unqes nul J. fuiz[8] M. et A. qe attendy estat. Prest etc.

Denom. C'est une negative et puist aver deux causes de verité[9]: ou pur ceo q'il y avoit nul tiel: ou q'il y avoit et n'attendy unqes estat. Par quey a cel respounse, q'est en noun certein, ne devietz estre r[ece]u.

Herle.[10] Soyt ceo l'un ou l'autre, vostre bref est mauveise, qe s'yl y avoit et unqes n'attendy estat, vostre bref est faux.

Denom. Q'il y avoit un J. frere Annore qe attendy estat. Prest etc.

Herle. Actioun ne poetz avoir, qar après la mort Jordan, Alice[11] fuist seisi des tenemenz come heir Jordan en fee symple, issint q'ele pout aver aliené. Jugement, si rien puissetz demaunder par my la fourme.

Denom. Nous voloms averrer qe les tenemenz furent donetz a M. et A. *ut supra*,[12] et nous sumes fille et heir etc. par la fourme. Quey responez vous a la fourme?

Malm. A ceo n'avoms mestier a respoundre, qar nous vous dyoms qe A. sourvesquit Jordan le donour et fuist heir du saunc, issint qe après sa mort ele avoit fee symple et pout aver aliené. Jugement.

Pass. Nous demaundoms par la fourme qe tailla a M. et A. come heir M.[13] par la fourme et nyent heir A. generalment,[14] la quele fourme nous voloms averrer, a quey vous ne responez nyent. Jugement.

Herle. Après la mort A., R.[15] le secunde baroun tient par la ley[16] d'Engleterre toute sa vie, pur ceo qe ceo fust le heritage A.[17] Par quey il pert q'ele avoit fee symple. Et d'autrepart, sy un estraunge se eust abatu après la mort R., J.[18] fuiz et heir A., qe aliena les tenemenz a nous, eust recoveré par le mortdauncestre. Pur quei etc.

[1] *Vulg.* p. 72. Text of this second version from *B*: compared with *L*. [2] Furnigwal *L*. [3] lez *L*. [4] Mich. et Alic. et Jon. *L*. [5] Annore *L*. [6] a *L*. [7] par la firme *L*. [8] *Ins.* et heir *L*. [9] *Om.* de verite *L*. [10] *Om.* this and the next speech *L*. [11] A. *B*; Alice *L*. [12] donez en fee taylle *L*. [13] come lour heir *L*. [14] heir soul Jordan *L*. [15] Richard *L*. [16] curteysie *L*. [17] Alice *L*. [18] la mort Ric. B. *L*.

49b. RASEN *v.* FURNIVAL.

One Annora brought a writ of formedon in the descender against T. de Furnival and demanded certain tenements which one Jordan gave to Michael and Alice and the heirs of their two bodies begotten, and which after the death of Michael and Alice and John should descend to the demandant as sister and heir by the form of the gift.

Herle. You have counted through one John, and we will aver that there was never any John son of Michael and Alice who lived to attain an estate. Ready etc.

Denom. That negative of yours might be true in two ways; either because there never was such a person, or because there was such a person but he did not attain an estate. To this uncertain answer you cannot be received.

Herle. Take it which way you please, your writ is bad, for if there was such a person and he did not attain an estate, [still] your writ is false.

Denom. There was one John brother of Annora who attained an estate. Ready etc.

Herle. Action you cannot have, for after Jordan's death Alice was seised as heir of Jordan in fee simple so that she could have alienated. Judgment, whether you can demand anything by the form of the gift.

Denom. We will aver that the tenements were given to Michael and Alice [in fee tail,] and we are daughter and heir by the form of the gift. What say you to the form?

Malberthorpe. We need not answer, for we tell you that Alice outlived Jordan, the donor, and was heir of blood, so that after his death she had fee simple and could have alienated. Judgment.

Passeley. We demand by the form of the gift limited to Michael and Alice as being [their] heir and not as Alice's heir general. And this form we offer to aver, and you do not answer; therefore judgment.

Herle. After the death of Alice, her second husband [1] held by the curtesy all his life, for that it was Alice's inheritance. From this it appears that she had fee simple. Besides, if a stranger had abated after [that husband's] death, the son and heir of Alice, who alienated the tenements to us, would have recovered by the mortdancestor. Wherefore etc.

[1] In this version the second husband is called Richard, and the son of the second marriage is J. or W.

Denom. En cas homme recovera par le mortdauncestre etc. et unqore n'ad yl [1] pouer de aliener.

Ber. Ele dit q'ele est heir M.[2] par la fourme et ne cleyme rien come heir J.[3] Pur quey vous ne pledez rien a ceo q'il dit.[4]

Toud. Nous diom qe A. devia seisi de ceuz tenementz en son demene com de fee; après qi mort W. entra com fitz.

Denom. Responez si Jordan dona auxi com nostre bref suppose.

Toud. Jordan ne dona mye, eynz Alice entra com file et heir. Prest etc.

Denom. Q'il dona en la forme com nostre bref suppose. Prest etc.

49c. RASEN *v.* FURNIVAL.[5]

Anore porta breve de forme de doun en le *descendere* vers un A. et dit en son bref qe un Jordan dona mesme les tenemenz a une Michael et Alice sa femme et a les heirs de lour cors engendrez, et les queux après la mort Michael et A. et Johane fiz et heir mesme ceux M. et A. a Anore seor et heir mesme celi Johane decendre deit per formam etc.

Herle. Ceo est une breve de forme doun en le *descendere,* et par la ou il[6] fet par son breve Anore seore et heire Johane, nous vous dioms qe Jon ne tendi unqes estat issi q'il pout de ceux tenemenz heir avoir, si non de son corps engendré. Jugement due breve, q'il poeit avoir eu bone breve a dir [7] en les queux après la mort Michel et Alice a A. sa fille et heyre Michael et Alice [8] deit decendre.

Denom. La ou il dient qe Johane n'atendi unqes estat, nous vous dioms qe Johane survesquit Michael et Alice et issi atendi estat. Jugement.

Herle. Nous vous dioms qe Jordan avoyt une fielle Alice qe survesquit son pere, issi qe après la mort [9] Jordan le dreit de la reversioun descendi a mesme cele Alice com a feylle et heyre, et el fut seisi en son demene com de fee de mesme les tenemenz et morut seisi de cel estat. Et desicom el pout avoir son recoverire de la mort Alice par breve de mortdauncestre a la comune ley, jugement si a ceti breve

[1] par le mord. sil nad pas *L.* [2] Michel *L.* [3] A. *L.* [4] Et il ne plede pas a ceo qe vous dites ne vous a ceo qel dit *L.* *End of report in B; what follows from L.* [5] Text of this third version from *S*: compared with *T.* [6] *Sic S, T.* [7] dire *T.* [8] *Om.* et Alice *T.* [9] *Rep.* la mort *S.*

Denom. There are cases in which a man can recover by the mortdancestor and yet has no power to alienate.

Bereford, C.J. She says that she is the heir of Michael [and Alice] according to the form of the gift, and claims nothing as heir of Alice.[1] So you are pleading at cross purposes.[2]

Toudeby. We say that Alice died seised in her demesne as of fee, and that after her death [our alienor] entered as her son.

Denom. Answer whether Jordan gave in the manner supposed by our writ.

Toudeby. Jordan did not give, but Alice entered as daughter and heir. Ready etc.

Denom. Jordan did give in the form supposed by our writ. Ready etc.

49c. RASEN *v.* FURNIVAL.

Annora brought a writ of formedon in the descender and said in her writ that one Jordan gave the tenements to Michael and Alice his wife and the heirs of their bodies begotten, and that the tenements after the death of Michael and Alice and John their son and heir ought to descend to the demandant as sister and heir of John according to the form of the gift.

Herle. This is a writ of formedon in the descender ; and, whereas the writ makes the demandant sister and heir of John, we say that John never attained an estate so that he could have an heir of these tenements except one begotten of his body. Judgment of the writ, for they might have had a good writ saying ' and which after the death of Michael and Alice ought to descend to the demandant as daughter and heir of Michael and Alice.'

Denom. Whereas they say that John never attained an estate, we tell you that he survived Michael and Alice and so attained an estate. Judgment.

Herle. We tell you that Jordan had a daughter, Alice, who outlived her father, so that after his death the right of the reversion descended to this same Alice as daughter and heir ; and she was seised in her demesne as of fee and died seised of that estate. And whereas [the demandant] could have had her recovery [if any] on the death of Alice by writ of mortdancestor at the common law, we pray judgment whether she is to be answered to this writ. And we also say that on

[1] Or perhaps ' of Jordan.'
[2] One of our books carries the case no further.

etc. Et vous dioms outre qe après la mort Alice entra un Richard com fiz et heyre et aliena. Jugement.

Denom. Nous ne sumes pas heyre generale a Alice, einz sumes restreynt par my la taille qe nous nous fesoms [1] heire Michael et Alice en comune, et ne my l'eyre Alice soul. Jugement.

Et furunt ajornés, desicom il ad clamé com heir restreynt par la taille qe se fit a son pere et sa mere.

Herle. Vous ne poëtz avoir action qe le fee fut enpurye en la persone Alice, et Richard fut heir Alice et entra et aliena.

Postea in quindena Michaelis *Herle*: Sire nous vous dioms qe Jordan morust seisi. Après qi mort Alice entra com fielle et heyre saun ceo qe le baron et Alice rien avoynt par la taille. Prest etc. (Et hoc quia non audebat expectare iudicium: ideo prest etc.)

49D. RASEN *v.* FURNIVAL.[2]

Une Annore porta son bref de forme de doun et dit qe un Jordan dona ceux tenemenz a Michael de Mannorez et Alice sa femme en fee taillé, et ele est issue mesmes ceux Michael et Alice etc.

Herle. Actioun a ceux tenemenz demander ne pout avoir, qe ceux tenemenz furent en la seisine un Jordan, et l'avandite Alice fut file et heir mesme cely Jordan et survesquit mesme cely Jordan. Après qy mort ele tint les tenemenz com heir Jordan et morust seisi. Après qy mort entra un Richard cum fitz et heir et nous enfeffa. Et demandoms jugement si actioun pusset avoir.

Fris. Grantez primes la forme tiele com nous avoms dit, et pus demorroms en jugement.

Herle. A granter la forme n'avoms mestier, qe Alice fut file e heir Jordan, et issint qe qaunqe fut en la persone Jordan descendit a Alice com a heir; et après la mort Alice son seconde baroun G. tint les tenemenz par la ley d'Engleterre, par la reson q'il avoit issue mesme cely Richard; et après la mort G. entra Richard com fitz e heir, et issint les tenemenz en la persone Richard enpurés. Et demandoms jugement.

Migg. Posoms nous qe un estrange ust entré les tenemenz après la mort G. qe tynt par la ley d'Engleterre, Richard ust recovery par le mortdauncestre, et si ust il recovery com de fee simple; et impossibile serreit qe ele ust recovery par la forme si ele ne poeit mostrer taille plus tardive.

[1] qe nous fussoms *T*. [2] Text from *R*.

the death of Alice, one Richard entered as son and heir and alienated. Judgment.

Denom. We are not heir general of Alice, but are restricted by the tail to making ourselves heir of Michael and Alice in common, and not heir of Alice only. Judgment.

And they were adjourned, since she claimed as heir restricted by the tail made to her father and mother.

Herle. You cannot have action, for the fee was purified in the person of Alice, and Richard was her heir and entered and alienated.

Afterwards in the quindene of Michaelmas *Herle* said: We tell you, Sir, that Jordan died seised; and that on his death Alice entered as daughter and heir without [Michael] and her having anything by the tail. (And this he said because he dared not abide judgment: so to the country.)

49D. RASEN *v.* FURNIVAL.

One Annora brought her writ of formedon and said that one Jordan gave the tenements to Michael de Mannorez and Alice his wife in fee tail, and that [the demandant] was issue of the said Michael and Alice.

Herle. Action to demand these tenements she cannot have; for they were in the seisin of one Jordan, and the said Alice was daughter and heir of the said Jordan and outlived him, and after his death held these tenements as his heir and died seised. After her death one Richard entered as son and heir and enfeoffed us. We pray judgment whether you can have action.

Freskeney. First admit the form [of the gift] as we stated it, and then let us abide judgment.

Herle. To admit it we have no need; for Alice was daughter and heir of Jordan, and so whatever was in Jordan's person descended to her as heir; and after her death her second husband G. held the tenements by the curtesy, by reason that he had issue, namely, this same Richard; and on the death of G., Richard entered as son and heir, and so the tenements were purified in the person of Richard. We pray judgment.

Miggeley. Let us suppose that a stranger had entered after the death of G. the tenant by the curtesy, Richard would have recovered by the mortdancestor, and therefore he would have recovered as of fee simple; and it would have been impossible for [the demandant] to recover [from Richard] by formedon if she could not show a later 'tail.'

H. Scrop. Il dit qe tot le dreit qe fut a Jordan descendit a Alice com a file et heir et morust seisi etc., après qy mort Richard entra com fitz et heir. Et issynt est son estat[1] equipollent a ceo qe Alice entra après la mort Jordan com a son heritage.

Toud. Nous vous dioms qe Alice tynt par la forme, après qy mort Richard entra et aliena. Et demandoms jugement.

Herle. La ou il supposent qe Jordan dona *ut supra*, il ne dona poynt, mès morust seisi; après qy mort Alice entra com en son heritage. Prest etc.

Note from the Record.

De Banco Roll, Mich. 4 Edw. II. (No. 183), r. 113, York.

Robert de Rasen and Annora his wife, by their attorney, demand against Thomas de Furnivalle the elder five messuages, one mill, ten bovates and five acres of land, fifteen acres of meadow, three acres of pasture, two hundred and twenty acres of wood, and seven shillingworths of rent in Treton and Tynneslowe[2] which Jordan de Treton gave to Michael de Mannowers and Alice his wife and the heirs of the bodies of Michael and Alice issuing, and which after the death of Michael and Alice, and of John, son and heir of Michael and Alice, ought to descend to Annora, sister and heir of John by the form of the gift. [The demandants] say that Jordan was seised of the tenements and gave them to Michael and Alice in the form aforesaid, and that by this gift they were seised of the tenements in time of peace, in the time of Henry [III.], taking thence

[1] *Corr.* son dit (?) [2] Mod. Treeton and Tinsley, near Sheffield.

H. Scrope, J. He says that the whole right which was in Jordan descended to Alice as daughter and heir, and that [she] died seised, and that on [her] death Richard entered as son and heir. This is equivalent to saying that on Jordan's death Alice entered as into her inheritance [in fee simple].

Toudeby. We tell you that Alice held by the form [of the gift], and that after her death Richard entered and alienated. We pray judgment.

Herle. Whereas they suppose that Jordan gave as stated above, he did not give, but died seised, and after his death Alice entered as into her heritage. Ready etc.

Note from the Record (*continued*).

esplees to the value etc.; and from Michael and Alice the right descended to one John, as son and heir, and from him, since he died without an heir of his body, it descended to Annora as sister and heir etc.

Thomas by his attorney, after formal defence, says that Robert and Annora can claim nothing in the tenements by the form of the gift; for he says that Jordan died seised of the tenements in his demesne as of fee, upon whose death Alice entered into the tenements as his daughter and heir etc., without this (*absque hoc*) that Michael and Alice ever had anything in the tenements by the gift of Jordan as Robert and Annora say; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Hilary.

PLACITA DE TERMINO S. TRINITATIS ANNO REGIS EDWARDI FILII REGIS EDWARDI TERCIO.

1. PRESTON *v.* SIMONSON.[1]

Entré, ou il pria estre receu par la defaute soun tenaunt a terme de vie; et altre fust mye receu dire q'il n'avoyt rien en la reversion jour du bref; et dit qe nient de lour lees.

Un A. porta soun bref d'entré vers B. qi fist defaute après defaute. Survient un homme et sa femme et prierent d'estre receu etc. Et disoient qe le tenaunt n'avoit estat si noun a terme de vie de lour lees.

Denom.[2] Jour du bref purchacé vous n'avietz rienz en la revercioun.

Scrop. Nous avoms dit q'il tient de nostre lees a terme de vie, et ceo est cause de nostre priere.

Hedon. Il poet estre qe vous luy feistes une quiteclamaunce,[3] dount vous ne devetz estre receu, depus qe nous tendomps d'averer q'au jour du bref purchacé vous n'avietz rien en la reversioun.

Hervi. La cause purqei il prient d'estre receu si est purceo q'il tient de eaux et de lour lees a terme de vie, et de ceo mettent avaunt fait. Estre ceo, il dient q'il n'avoit aultre estat pus. Par quei etc.[4]

Hedon. Nyent de lour[5] lees. Prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 20, Northamp.

Laurence de Preston, by Simon of Cranesle, his attorney, offered himself on the fourth day against Hugh, son of Simon le Clerk, of a plea of a messuage, nine acres and a half of land, and two acres of meadow, in Esteton, which he claims as his right. And he [Hugh] comes not and

[1] Text from *A*: compared with *D*, *M*, *P*, *S*, *T*. [2] Hedone *M*, *P*, *S*, *T*. [3] *Ins.* en sa seisine *M*, *P*, *S*, *T*. [4] R[espone]z a ceo *P*, *S*, *T*. [5] son *M*, *S*, *T*.

PLEAS OF TRINITY TERM IN THE THIRD YEAR OF KING EDWARD II. (A.D. 1310).

1. PRESTON *v.* SIMONSON.[1]

An intervener prays receipt on the ground that the tenant, who is making default, is tenant for life by the intervener's lease. It is not a good answer to say: You had nothing in the reversion on the day of writ purchased.

One A. brought his writ of entry against B., who made default after default. A man and his wife intervened and prayed to be received etc. They said that the tenant had only an estate for life by their lease.

Denom.[2] On the day of writ purchased you had nothing in the reversion.

Scrope. We have said that he holds by our lease for term of life, and that is the cause of our prayer.

Hedon. It may be that you made him a quitclaim; so you ought not to be received, since we tender an averment that on the day of writ purchased you had nothing in the reversion.

Stanton, J. Their cause for praying to be received is that [the tenant] holds of them by their lease for term of life, and to show this they produce a deed. In addition they say that he had no other estate afterwards. Wherefore etc.

Hedon. Not by their lease. Ready etc.

Issue joined.

Note from the Record (*continued*).

heretofore made default, to wit, on the octave of Michaelmas last, after he had appeared in court, so that then the sheriff was ordered to take the tenements into the King's hand and to summon him to be here on the octave of Hilary next following to hear his judgment; and the sheriff then

[1] Proper names from the record. [2] Or Hedon.

Note from the Record (*continued*).

returned that the tenements were taken etc., and that he was summoned etc. And Hugh at that day had himself essoined against him [Laurence] of the King's service, and of this he does not now produce his warrant etc.

And thereupon come Nicholas de Perye de Tonec' and Joan his wife and say that Hugh has nothing in the tenements but a tenancy for the term of his life by the demise of Nicholas and Joan, and that the reversion is theirs; and they pray that by Hugh's default they may not lose the tenements, since they are ready to answer therefor; and they pray that they be received to this; and they produce a writing indented between them and Hugh, which witnesses the said demise.

Laurence says that Nicholas and Joan ought not to be received to delay his seisin in this behalf; for he says that on the day of writ purchased, to wit, 1 May in 1 Edw. II., Hugh held the tenements, not for any term, but in fee; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the morrow of All Souls. And thereupon Nicholas and Joan found mainpernors [six persons

2A. NASSHE *v.* NORTHAW.[1]

Entré sour disseisine, ou piert qe chartre fait en la seisine le tenaunt par le disseisi ly barra d'actioun et soun heir auxi.

Entré de disseisina facta patri petentis ubi carta eiusdem patris fuit proposita, et dit fut q'il ne fut pas seisi etc. le jour de la chartre fete.

Jon le fitz William porta son bref d'entré foundu sur la novele diseisine vers Robert le fitz Henri, et dit en les quex il n'avoit entré sinoun par Henri de Astone, qe a tort et sanz jugement diseisi William son piere, qe heir il est.

Wilby. Jon ne put en ceux tenemenz rien demander, qar William son piere, qy heir il est, fut seisi de ceux tenemenz, qe hors de sa seisine enfeffa Henri nostre piere, qy heir etc., par sa chartre et obliga ly et ses heirs a la garrantie, et si nous fusoms enpledé de un estrange, il nous garr[antireit]. Jugement, si encountre le fet son auncestre, qe heir etc., puisse actioun avoir.

Hertepol. Nostre actioun est foundu sur une diseisine fet a nostre piere, et il met avant chartre qe testmoyne qe William dona les tenemenz a Henri piere Robert, q'est le contrarie de nostre actioun, et issi sumes nous a issue du plee. Et qe Henri diseisi William nostre piere auxi comme nostre bref suppose, prest etc.

[1] Text of this first version from *R.* Headnotes from *A* and *P.*

Note from the Record (*continued*).

named] to answer Laurence for all the issues of the tenements arising in the meantime, in case it happen that the said jury pass (*transiret*) against them.

Afterwards, the process between Laurence and Nicholas and Joan being continued, now, to wit, on the octave of Michaelmas in 5 Edw. II., Laurence comes by the said Simon his attorney; and Nicholas and Joan come not. And Laurence prays judgment of the preceding default of Hugh, and that seisin be adjudged him. Therefore to judgment on the said default. It is awarded that Laurence recover his seisin against Hugh by default, and that Hugh be in mercy. And Laurence prays that Nicholas and Joan answer for the issues in the meantime etc. Therefore have he a writ of inquiry, and be the inquest made known here on the quindene of Martinmas.

On that day the sheriff returned the inquest, which says that the tenements were worth in all issues at their true value in the meantime (to wit, from the octave of Trinity, in 3 Edw. II., until the octave of Michaelmas) thirty-nine shillings and eight pence. Therefore be execution done etc.

2A. NASSHE *v.* NORTHAW.[1]

In a writ of entry by the disseisee's heir against the disseisor's heir a plea of feoffment with warranty by the supposed disseisee to the supposed disseisor would apparently be bad as tantamount to the general issue. But a release with warranty in the disseisor's seisin can be pleaded and must be confessed or denied.

John son of William brought his writ of entry founded upon the novel disseisin against Robert son of Henry, saying 'into which he had no entry save by (*per*) Henry of Aston, who wrongfully and without judgment disseised William his father, whose heir he is.'

Willoughby. John can demand nothing in these tenements; for William his father, whose heir he is, was seised of them, and out of his seisin enfeoffed Henry our father, whose heir [we are], by his charter, and bound himself and his heirs to warranty, and, if we were impleaded by a stranger, he [the demandant] would have to warrant us. Judgment, whether against the deed of his ancestor, whose heir he is, he can have action.

Hartlepool. Our action is founded on a disseisin done to our father, and he produces a charter which witnesses that [our father] gave the tenements to [his] father. That is contrary to our action, and we are therefore at issue. Ready we are to aver that Henry disseised William as alleged by our writ.

[1] For the proper names, see our note from the record.

Denum. Est ceo le fet vostre auncestre ou ne mye?

Hertepol. Jeo n'ay mye mestier a ceo respondre, qar ceste actioun depent d'une assise de novele diseisine; dount si William fut en vye et portast l'assise, la chartre ne ly barreyt poynt; et *per consequens* en cesti bref q'est foundu sur la novele diseisine fete a nostre piere.

Berr. Vous avetz dit qe William dut estre seisi et hors de sa seisine dona ceux tenemenz a Henri vostre piere et obliga etc. Volet vous ceo pur respons (*quasi diceret* quod Jon serra receu encountre tieu respons d'averer son bref sanz respondre a la chartre)?

Scrop. William piere Jon, qy etc., en la seisine Henri nostre piere, qy heir nous sumes, fit ceste chartre et obliga ly et ses heirs etc. Jugement, si pussez rien demander.

Hertepol. Nous pernoms nostre title de une diseisine fete a nostre piere, la quele n'est pas dedite. Jugement de eux com de noun defenduz. Et prioms seisine de terre.

Berr. Il ne vous plede mye a ceo qe vous pledez, qar il suppose prover ceo q'il ad dit. Il vous bye reboter d'actioun a toux jours.

Hertepol. Qe Henri ne fut pas seisi au temps de la confectioun de cest chartre. Prest etc.

Cant. Est ceo le fet vostre auncestre ou ne mye?

Et fut chacé par la court a conustre le fet ou dedire.

Hertepol cognovit factum, et dit qe Henri piere Robert ne fut pas seisi des tenemenz au temps de la confectioun de la chartre. Prest etc.

Et alii e contra.

2B. NASSHE *v.* NORTHAW.[1]

Un A. porta bref d'entré vers B. *de quibus* il disseisi William soun piere qi heir etc.[2]

Willeby. Actioun ne poetz avoir, qar W. vostre piere, qi heir etc., en nostre seisine nous fist ceste chartre et obliga[3] luy et ses heirs a la garrauntie, et si nous fussoms enpledé d'un estraunge nous vous lieroms etc. Jugement etc.

[1] Text from *A*: compared with *D*, *M*, *P*, *S*, *T*. [2] vers B. in que etc. nisi per W. qui inde iniuste etc. disseisivit *M*, *P*; *sim. S*, *T*. [3] ne poiez avoir qe W. vostre pere qi heir etc. par ceste chartre dona etc. et obliga *M*, *S*, *T*.

Denom. Is this your ancestor's deed or not?

Hartlepool. I have no need to answer that; for this action depends from the assize of novel disseisin, and if [the demandant's father] were alive and brought the assize, the charter would not bar him, and consequently [it will not bar us] in this writ, which is founded on the novel disseisin done to our father.

Bereford, C.J. You [for the tenant] have said that William was seised and that out of his seisin he gave these tenements to Henry your father and that he bound etc. Do you wish that to be your answer? (He implied that against such a plea [the demandant] would be received to aver his writ without answering to the charter.)

Scrope. William [the demandant's] father made this charter in the seisin of our father,[1] whose heir we are, and bound himself and his heirs etc. Judgment, whether you can demand anything.

Hartlepool. We take our title on a disseisin done to our father, which is not denied. Judgment against them, as against the undefended. We pray seisin of the land.

Bereford, C.J. He is not pleading to what you plead, for he supposes to prove what he has said and hopes to rebut you from the action for ever.

Hartlepool. [The tenant's father] was not seised at the time of the making of this charter. Ready etc.

Cambridge. Is this the deed of your ancestor or no?

He was driven by the Court to confess or deny the deed.

Hartlepool confessed the deed, and said that [the tenant's father] was not seised of the tenements at the time of the making of the charter. Ready etc.

Issue joined.

2b. NASSHE *v.* NORTHAW.[2]

One A. brought a writ of entry against B., saying 'of which (*de quibus*) tenements he, B., disseised William [the demandant's] father.'

Willoughby. Action you cannot have, for William your father, whose heir [you are], made this charter to us in our seisin and bound himself and his heirs to warranty; and, if we were impleaded by a stranger, we should bind you [to warranty]. Judgment etc.

[1] Apparently the tenant's counsel begin to use as a release what they first produced as a charter of feoffment.

[2] This report as given by our main manuscript seems to be the outcome of an attempt to simplify the case. An action in the *per* against the disseisor's heir is converted into an action in the *de quibus* against the disseisor. Observe the variants.

Herle.[1] Donqes dites vous qe vous entrastes[2] par la chartre; qe[3] par diseisine, prest etc.

Scrop. Nous n'avoms mestier a graunter l'entré ne a dedire, mès nous dioms qe nous[4] sumes[5] seisi etc., et avoms mys avaunt le fait vostre piere,[6] par quel il se obliga a la garrauntie etc.[7]

Herle.[8] Si le piere qe fust disseisi portast l'assise, et le disseisour meist avaunt la chartre, ceo ne barr[eit] mye l'assise. Dount depus qe ceste bref prent sa nessaunce de la diseisine,[9] par consequent nec hic.

Willebi. Veez cy la chartre vostre auncestre. Par qei etc.

Herle. Dount grauntez vous qe vous entrastes par disseisine,[10] mès dites qe la chartre fust fait en vostre seisine.[11]

Berr. Mettetz vostre r[espouns] en certeyn.

Scrop. Nous dioms qe vostre piere, qi heir etc., en nostre seisine nous fist cele chartre et obliga luy et ses heirs a la garrauntie, *ut supra.*[12] Jugement etc.

Hertep. Q'il ne fust pas seisi le jour de la chartre fait. Prest etc. Et alii econtra.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 51d, Hertf.

Joan, daughter of Henry atte Nasshe, by her attorney, demands against John de la Northawe fourscore acres of land and six acres of meadow in Tytehurst and Aldenham as her right and inheritance, and into which John has no entry save by William de Northaw, who demised them to him, [and] who thereof wrongfully and without judgment disseised Henry atte Nasshe, Joan's father, whose heir she is, since the first [voyage of Henry III. into Gascony].

John, by his attorney, after formal defence, says that Joan can claim no right in the tenements of the seisin of Henry her father; for he says that the tenements being in the seisin of William of Northawe, John's father, whose heir he is, Henry granted and by his charter confirmed the tenements to William, and bound himself and his heirs to warranty; wherefore, if he

[1] Hert. *M*; Hertep *P*; Hedon *S*, *T*. [2] vostre pere entra *M*, *P*, *S*, *T*. [3] et nyent etc. *M*; et nent *P*, *S*, *T*. [4] *Ins.* ne *D*. [5] feussoms *M*; sumes *P*, *S*, *T*. [6] *Ins.* fet en la seisine nostre pere *M*, *P*, *S*, *T*. [7] a lui et a ses heirs, jugement *M*, *P*, *S*, *T*. [8] Hert. *D*; Hervi *M*, *P*, *S*, *T*. [9] *Om.* de la diseisine *A*, *D*. [10] vous lentre par diseisine *M*, *S*, *T*. [11] mes en vostre seisine la chartre fut fet *M*, *P*. [12] dont si nous feussoms enplede etc. *M*; *sim.* *P*, *S*, *T*; *add* de un estrange *P*.

Herle.[1] Then your plea is that you entered by the charter and not by disseisin. Ready [to aver the contrary].

Scrope. We have no need to confess or deny the entry, but we say that we were seised and have produced your father's deed whereby he bound himself to warranty.

Herle.[2] If the father who was disseised brought the assize, and the disseisor produced the charter, that would not bar the assize. And it will be no bar in this writ which has its origin in the disseisin.

Willoughby. See here the charter of your ancestor. Therefore etc.

Herle. Then admit that you entered by disseisin, but say that the charter was made in your seisin.

Bereford, C.J. You must put your answer in certainty.

Scrope. We say that your father, whose heir [you are], made us this charter in our seisin, and bound himself and his heirs to warranty, so that if we were impleaded—as above.[3] Judgment etc.

Hartlepool. You were not seised on the day of the making of the charter. Ready etc.

Issue joined.

Note from the Record (*continued*).

[John] were impleaded by a stranger, Joan, as heir of Henry, would be bound to warrant him; and he prays judgment. He produces a charter under the name of Henry, father of Joan, which witnesses that Henry gave, granted, and confirmed to William the said tenements, to hold to him and his heirs, and that he [Henry] and his heirs would warrant to William and his heirs.

Joan says that the charter ought not to prejudice her; for she says that William at the time of the making of the charter was not seised of the tenements; and she demands that this may be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the morrow of St. Martin. And be it known that the witnesses in the charter are [eleven names].

[1] Or Hedon or Hartlepool.

[2] Or Stanton, J.

[3] The unfinished formula is that of a rebutter by warranty.

3A. MARESCHAL *v.* FOLIOT.[1]

Wast porté par le baroun et la femme 'de hereditate ipsorum etc.' et meintenu, ou la femme n'avoyt qe terme de vie : ou le tenaunt dit qe lez pleintifs furent tenanz par lour garrauntie longe temps avaunt etc. : et chacez a respoundre oltre pur ceo q'il tient le fraunctenement.

Un A. et B. sa femme porterunt lour bref de wast vers femme tenaunt en dower.

Herle.[2] Il n'ount rien en la reversioun sy noun par purchaz. Jugement. Et d'aultrepart c'est countre comune dreit[3] qe un homme et sa femme seient enheiritez de une chose[4] par descent de heritage.

Scrop. Et nous jugement, depus qe vous avet conu qe la reversioun a nous appent, et aultre bref ne pooms avoir[5] si noun 'quod tenet in dote de hereditate etc.'

Et fust le bref agardé bon qaunt a ceo.[6]

Herle.[7] Les tenemenz sount le[8] purchaz le barroun a luy et a sa femme et as heirs le barroun. Et issint la femme n'ad qe terme de vie. Et le bref voet 'ad exheredacionem ipsorum[9] etc.,' en supposaunt qe la desheritaunce soit taunt avaunt a la femme com a baroun et q'il ount owel estat. Jugement du bref.

Scrop.[10] Jeo pose qe la femme tenaunte en dower devie, auxint avaunt est la reversioun a la femme com a baroun, a meyns a terme de la vie la femme. Et si nul recoverir se face, auxint avaunt[11] fra[12] a la femme[13] com al baroun a la vie la femme. Dount il covent a force q'ele soit nomé.

Denom. ad idem. Si le baroun eust porté bref soul,[14] si supposer[eit] il recoverir fraunctenement soul, la ou un aultre ad[15] auxint avaunt purchacé[16] come luy; et par taunt soun bref abatereit.

Ing.[17] wayva sa[18] excepcioun, et pus dit qe pus[19] le bref de wast purchacé si fust un bref d'entré porté devers nous,[20] a quel bref nous

[1] Text of this first version from *A* : compared with *D*, *M*, *P*, *R*, *S*, *T*. [2] Ing. *R*. [3] ley *M*, *R* ; encontre ley *P*. [4] mesme tenance *R*. [5] *Ins.* en la chauncellerie *M*, *P*, *R*, *S*, *T*. [6] *Om.* qaunt a ceo *R*. [7] Heng. *R*, *S*, *T*. [8] de *R*. [9] talis et talis *M*, *P*, *R*, *S*, *T*. [10] Herle *R*, *S*, *T*. [11] *Om.* avaunt *D* ; *ins.* le *M*, *S*, *T* ; se *P*. [12] face avant le fra il *R* ; *ins.* il *S*, *T*. [13] *Ins.* a terme de vie *M*, *P* ; au meynz a terme de la vie *R*. [14] *Ins.* et fut a recoverer fraunctenement *M*, *P*, *R*, *S*, *T*. [15] fut *M*, *P*, *R*, *S*, *T*. [16] purchaceour *M*, *P*, *S*, *T*. [17] Heng. *R* ; Ingham *P* ; Ing. *S*, *T*. [18] cele *R* ; la *P*, *S*, *T*. [19] *Om.* pus *A*, *D*. [20] lui *M* ; ly *P*, *R*, *S*.

3A. MARESCHAL *v.* FOLIOT.[1]

Husband and wife can bring a writ for waste done 'in their inheritance' against a doweress, though the reversion was conveyed to them and the heirs of the husband. A reversioner, by entering into warranty on the voucher of a doweress, does not so far become tenant that he cannot sue the doweress for waste.

One A. and B. his wife brought their writ of waste against a woman holding in dower.

Herle.[2] They have nothing in the reversion except by purchase. We pray judgment. Besides it is contrary to common law that man and wife together should inherit by descent.

Scrope. And we for our part pray judgment, since you have confessed that the reversion belongs to us, and we can have no other writ save [this] that says 'which she holds in dower of their inheritance.'

As to this matter the writ was adjudged good.

Herle. The tenements are of the husband's purchasing, to him and his wife and his own heirs. So the wife has only for term of life, and the writ says 'to their disheritance,' thus supposing that the wife is as much disinherited [by the waste] as is the husband, and that they have equal estates. Judgment of the writ.

Scrope. Put case that the doweress dies, the reversion is quite as much to the wife as to the husband, at least for the term of the wife's life. And if a recovery of [the wasted tenements] be had, that will, so long as the wife lives, be quite as much for her advantage as for her husband's. Therefore perforce she must be named in the writ.

Denom on the same side. If the husband alone had brought the writ, then he would be endeavouring to recover freehold all by himself where another person is as much a purchaser as he is; and for that reason his writ would abate.

Ingham waived the plea and then said: After this writ of waste was purchased a writ of entry was brought against us, in which writ we

[1] This case is Fitz. *Wast*, 4. Proper names from the record.
[2] Or perhaps Ingham, and so below.

vochames[1] mesme ceaux, et eux entrerent en la garrauntie; et issint sount il unqore tenauntz par lour garrauntie. Jugement, si[2] pussent actioun avoir depus qe eaux mesme sount tenauntz en la maniere.[3]

Scrop. Vous estes tenaunt de[4] fraunctenement et avet fait wast.[5]

Hervi.[6] Vous estes[7] unqore seisi de fraunctenement. Resp[onez].[8]

Hyngh.[9] Nul wast etc. Prest etc.

Et alii econtra.

3B. MARESCHAL *v.* FOLIOT.[10]

Richard le fuiz G. et Alice sa femme porterent lour bref de waust vers une Margerie. Et fuist le bref tel 'quod fecit vastum de domibus etc. que tenet in dotem de hereditate predictorum R. et A. ad exheredacionem ipsorum R. et A.'

Heng. Le bref veot qe M. tient en douwere del heritage R. et A. sa femme, et le baroun et sa femme ne pount estre un heir de un heritage. Par quey etc. jugement du bref.

Scrop. C'est lour joyntte purchase et issint sount il enheriteez.

Stant. Dites outre.

Heng. Unqore jugement du bref, qe nous tenoms ceux tenemenz del heritage R. et A. en douwere, issint qe A. n'ad qe fraunctenement a terme de sa vie. Jugement, si ceo soit a sa desheritaunce, depuis q'ele n'est mye enheritee.

Scrop. Vous avetz la reversioun conu a nous, et de ceo prioms record. Et vous dyoms qe vous avietz fait wast, q'est un personel tort, a quey vous ne responez nyent. Jugement.

Hengh. Si Richard fuist mort, A. ne serroit mye r[espoundu] a ceo bref. Nyent plus ore. Jugement.

Scrop. Si Richard eust porté bref saunz nomer A., le bref eust abatu, pur ceo qe le recoverer est douné par cestui bref a recoverer damages et le lieu wausté, et l'un ne puist recoverer saunz l'autre, qe recoverer est doné par statut, qe ne serra mye severé, pour ceo qe sy Richard pout soul user ceste actioun, si recovereist il autrui fraunctenement qe n'est pas partie au plee.

[1] bref ele r' et vouch' *M, P, S, T*; bref ele vouch' *R.* [2] sil *D.* [3] avoir a demander mesmes dont il sount tenantz par lour garrantie *M. Sim. P, R, S, T*; *but* mesmes les tenemenz. [4] du *D.* [5] *Ins.* R[esponez] *M*; jugement si vous ne devez respondre *R.* [6] *Ins.* R[esponez] si *M, P. Om.* this speech *R.* [7] soiez *P.* [8] *Om.* Resp. *M, P.* [9] Heng. *M, S, T*; Hengham *P.* [10] *Vulg.* p. 79. Text of this version from *B.*

vouched [the present plaintiffs], and they entered into the warranty; and so they still are tenants by the warranty. Judgment, whether they can have an action when they themselves are in a manner tenants.[1]

Scrope. You are tenant of the freehold and have made waste.

Stanton, J. You [the doweress] are still seised of the freehold. So answer.

Ingham. No waste etc.

Issue joined.

3b. MARESCHAL *v.* FOLIOT.

Richard and Alice his wife brought their writ of waste against one Margery. The writ ran: 'that she made waste of houses etc. which she holds in dower of the inheritance of the said R. and A. to the disherison of the said R. and A.'

Ingham. The writ states that Margery holds in dower of the inheritance of R. and A. his wife; and husband and wife cannot be one heir of one inheritance. Therefore judgment of the writ.

Scrope. It is their joint purchase, and so they are 'inherited.'[2]

Stanton, J. Plead over.

Ingham. Once more judgment of the writ, for [it says that] we hold in dower of the inheritance of R. and A., and A. has only freehold for her life. Judgment, whether [waste] could be to her disherison since she is not 'inherited.'

Scrope. You have confessed the reversion to be in us. Of that we pray record. And we tell you that you have made waste which is a personal tort, and to that you make no answer. Judgment.

Ingham. If Richard were dead, Alice would not be answered to this writ. No more [should she be answered] now. Judgment.

Scrope. If Richard had brought a writ without naming her, it would have abated; for the recovery given by this writ is a recovery of damages and of the place wasted; and the one can not be recovered without the other; for the recovery is given by Statute[3] and does not admit of severance. If Richard alone could bring this action, why, then he would recover the freehold of another, who is no party to the plea.[4]

[1] Or 'are tenants by their warranty.'

[2] Our equivalent might be, 'they have an estate of inheritance.'

[3] Stat. Glouc. c. 5.

[4] Namely the freehold of his wife.

Hengh. ut prius.

Scrop. Richard et Alice purchaserent joyntement a eux et a lour heirs.

Stanton. Vous ne poietz ici demorrer. Dites outre.

Hengh. Longe temps avaunt cestuy bref purchasé, anno regni Regis Edwardi nunc secundo, si porta un R. bref d'entré devers nous et demaunda mesme les tenemenz. Et nous vouchames mesme ceux R. et A. a garraunt. Et ils entrerent en la garrauntie symplement saunz mencioun faire de waust. Le quel bref pent unqore ceinz. Jugement, depuis q'il sount tenauntz par lour garrauntie, s'yl puissent vers nous actioun avoir de ceo q'il sount mesmes tenauntz.

Scrop. Ceo ne eust mye esté respouns qaunt vous vouch[astes] a dire qe vous avietz fet waust par quey garrauntir ne devoms.

Hengh. Dounqe duissetz vous aver fait protestacioun a la court qaunt vous entrastes en la garrauntie ; sauve a vous vostre actioune de waust. Et ceo ne feistes mye. Jugement.

Scrop. Nous luy sourmettoms un personel fet, a quey il ne respount nyent etc.

Stanton. Dites outre.

Hengh. Vous mesmes avietz coupé boys et abatu etc., par quey nous avoms bref de trespas pendaunt en baunc le Roy ; issint nul waust fait par nous : prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 60d, Norf.

Margery, wife that was of Jordan Foliot, in mercy for divers defaults.

The same Margery was summoned to answer Ralph, son of Geoffrey le Mareschal and Alice his wife of a plea, wherefore she made waste, sale, and destruction of the woods which she holds in dower of the inheritance of the same Ralph and Alice (*ipsorum Radulfi et Alicie*) in Great Fransham, to the disherison of the same (*ipsorum*) Ralph and Alice etc. Ralph and Alice, by Gilbert de Fransham their attorney, say that, whereas Margery holds thirty-six acres of wood in the said vill in dower of the same (*ipsorum*) Ralph and Alice, she made waste, sale, and destruction in the said wood, to wit, by cutting down and felling four hundred and sixty oaks, price twelve pence apiece, and two thousand and sixty-three ashes, price twelve pence apiece, and three hundred apple trees, price eight pence apiece, and four hundred maples (*arabiles*), price twelve pence apiece, to the disherison of the same (*ipsorum*) Ralph and Alice : damages, twenty pounds. (*Note continued on opposite page.*)

Ingham repeated what he had said.

Scrope. Richard and Alice purchased jointly to them and their heirs.[1]

STANTON J. [to Ingham]. You cannot demur here. Plead over.

Ingham. Long before[2] this writ purchased, in the second year of the now king, one R. brought a writ of entry against us and demanded these same tenements. And we vouched Richard and Alice to warrant. They entered into the warranty simply, without mention made of any waste. The writ is still pending here. And since they are tenants by their warranty, we pray judgment whether they can have an action against us for that of which they are tenants.

Scrope. When you vouched, it would have been no answer to say that you had committed waste and that therefore we owed no warranty.

Ingham. Then when you entered into the warranty you ought to have made a protestation to the Court saving to yourselves your action of waste. And that you did not. Judgment.

Scrope. We surmise a personal act and to this she makes no answer etc.

STANTON, J. Plead over.

Ingham. You yourselves have cut and felled timber etc., and for this we have a writ of trespass pending in the King's Bench. So no waste by us: ready etc.

Issue joined.

Note from the Record (*continued*).

Margery, by Roger de Brisle her attorney, after formal defence, says that she made no waste, sale, or destruction in the said place, to the disherison etc.; for she says that if any damage be done in that place, Ralph and Alice did it by entering the wood on divers occasions and cutting down and carrying away the trees therein against Margery's will; and of this she puts herself upon the country.

The sheriff is commanded to go to the place wasted and there hold an inquest. There are further adjournments, but when the entry comes to an end, the inquest has not yet been taken.

[1] If so, Scrope seems to have been giving himself unnecessary trouble. But compare the other report.

[2] But see the other report.

4A. CANTERBURY (ARCHBISHOP OF) *v.* DYER.[1]

Eschete, ou piert qe, tut voyle homme averer q'il fust un foithe aquité et unqes pus areiné, il serra mye receu, einz nient atteint.

Eschete, ou demaundé fust pur quele felounie et devaunt qui : et dit fust q'il ne covendreit pas a dire : et puis dit, et voucha record, et fist venir le record etc., et avoit jour de terme etc.

Un A. porta bref d'eschete vers B. et counta q'a tort luy deforce, et dit etc. et sa eschete etc. par la resoun qe un C. tient de luy meisme les tenemenz par homage etc., des queux services etc., et les queux al avauntdit A. revertir etc. purceo qe l'avauntdit C. fist felonye, pro qua suspensus etc.

Hedon. A tiel count ne deit il estre receu, s'il ne deit pur quele felonye en certeyn, come roberye etc.

Pass. Nous avoms dit q'il fist felonye pur la quele etc., et ceo nous doune actioun d'eschete. Et a ceo vous r[esponez] nyent. Jugement etc.

Denom. Felonye poet estre tiele qe ne doune pas cause d'eschete, si come ou[2] l'apele de eyde *et huius modi* et fust atteynt de etc. par pays[3] et pus l'appelé de fait fust[4] acquité, par qei il covendreyt dire en certeyn. (Et fust ousté.)

Denom. Nous vous dioms qe a C. en le counté de M.[5] devaunt Sire W. de Berr. et ses compaignouns fust aresné[6] de la mort[7] un A., a quele houre il fust aquyté, et vous dioms qe avaunt ne unqes pus ne fust aretté[8] de felonye solounc ley de terre. Et qaunt un homme est acquyté une foitz de la mort il ne portera jammès myse[9] pur mesme la mort. Par qei il semble qe l'averement est resceyvable.

Berr. Jeo ai vew un homme estre arreigné[10] de la mort un homme et avoir[11] la chartre le Roi, par qei il passa quite, et aultrefoitz fust arreigné[12] de mesme la mort, et purceo q'il n'avoyt mye la chartre le Roy en poynge, il fust pendu. Dount, depus q'il voet averer q'il fist felonye, assetz luy suffist.[13]

Denom. Il ne fust unqes atteynt de[14] felonye. Prest.

Pass. voucha recorde etc.

[1] Text of this first version from *A* : compared with *D*, *M*, *P*. Headnotes from *A* and *B*. [2] un *D*. [3] sicom un homme appelle de eyde ou de force et eust este atteint par pays *M* ; *sim. P*, *but* sicum qaunt un. [4] eust este *M*, *P* ; lappel defait et fut *D*. [5] N *M*, *P*. [6] aresone *D* ; arrame *M* ; aram' *P*. [7] de la mort *M*, *P* ; de labet *A*, *D*. [8] arrame *M* ; arayne *P*. [9] juwys *D* ; et wyse *M* ; iuwis' *P*. [10] arrame *M* ; arayne *P*. [11] avoit *P*. [12] arrame *M* : arayne *P*. [13] *Ins.* pur luy *P*. [14] *Ins.* la *D*.

4A. CANTERBURY (ARCHBISHOP OF) *v.* DYER.[1]

In a writ of escheat alleging that *X.* committed felony and was hanged, it is needless to specify the felony. 'Acquitted of a certain felony and never arraigned of any other' is not a good plea. *Per* Bereford, J.: A man who has not his charter of pardon at hand may be tried and hanged, though at a former trial he went quit because of the charter.

One A. brought his writ of escheat against B. and counted that wrongfully B. deforces him, and said [that the land was] his escheat for the reason that one C. held the tenements of him by homage etc., of which services etc., and which tenements should revert to him, because the said C. committed felony and therefor was hanged etc.

Hedon. To that count he should not be received, unless he says in certain what the felony was, as robbery etc.

Passeley. We have said that he committed felony for which [he was hanged,] and that gives us an action of escheat. To that you make no answer. Judgment etc.

Denom. There may be such felony as gives no escheat: for instance, where a man is appealed as accessory[2] and is attainted by the country and afterwards the [principal] appellee is acquitted. So you must make the matter certain. (But he was ousted from the exception.)

Denom. We tell you that in such a county, before Sir W. de Bereford and his fellows, C. was arraigned for the [death] of one A. and was then acquitted, and that never before or afterwards was he arraigned of felony according to the law of the land. And when a man is once acquitted of a death, he never shall again be put in jeopardy[3] for the same death. So it seems that this averment is receivable.

Bereford, C.J. I have seen a man arraigned for homicide and go quit because he had the King's charter, and then he was arraigned another time of the same death, and because he had not the charter at hand he was hanged. So since he is willing to aver that [C.] committed felony, that is sufficient.

Denom. He was never attainted of felony. Ready etc.

Passeley vouched the record etc.

[1] Proper names from the record.

[2] Literally, 'appealed of aid, or of force, or the like.'

[3] Literally, 'he never again shall bear the mise;' or 'bear judgment.'

4B. CANTERBURY (ARCHBISHOP OF) *v.* DYER.[1]

L'Ercevesqe de Caunt[erburie] porta soun bref d'eschete vers B. et demaunda iiij. acres de terre com soun droit et le droit de sa esglise de la Trinité de Caunt[erburie], par la resoun qe un R. tient de lui ceux tenemenz par feuté et par sute etc. et par les services etc. par an ; des queux services il fuist seisi etc. come parmy la mayn soun verrei tenaunt ; et les queux a moy doivent revertir pur ceo qe l'avauntdit R. fit felonie, pur la quele yl fuist pendu.

Denom. Ou et devant qi et de quele felonie atteint ?

Pass. A C. devant W. de B. justice, pur diverses trespases assignez, l'an xxxiij.

Denom. De quele felonie fuist il atteint ?

Pass. Ceo ne covent mie dire, qar nous dioms q'il fit felonie pur la quele il fuist pendu.

Denom. Yl covent dire de quele felonie, qar vostre bref veot q'il fit *felon*[*iam*] et nyent *felonias*, et, sy vous deisset certeine felonie, la prendroms respounse qe de cele felonie fuist il aquité. Et d'autrepart, yl pout estre pendu et soun fuiz avoir recoverie par le mortdauncestre, come en cas de resceite ou le principal n'est pas atteint, ou s'yl fuist pendu pur mort de homme q'est unquore en pleine vie.

Berr. Moustrez par la ley q'il covent dire de quele felonie, qe, mesqe yl deissent certeyne felonie et trové fut par autre, unquore avera le seigneur l'eschete.

Denom. A M. l'an xxx. devaunt etc. fut il areint de la mort un B., ou il se mist de bien et de mal et fuist aquité, et d'autre felonie ne fuist yl areigné ne atteint.

Ber. Dount grauntez vous qe pur mesme cele felonie yl fuist autrefoiz atteint et pendu.

Denom. Ceo ne dy jeo mye, mès jeo dy *ut supra*.

Ber. Si trové[2] soit un homme q'ad la chartre le Roi et il l'eit oblié al houstel, et soit en court areigné de ceste felonie, et n'ad mye soun garr[aunt], ne serreit yl mye pendu (*quasi diceret sic*) ?

[1] *Vulg.* p. 81. Text of this version from *B.* [2] soit *interlined B.*

4B. CANTERBURY (ARCHBISHOP OF) *v.* DYER.

The Archbishop of Canterbury brought his writ of escheat against B. and demanded four acres of land as his right and the right of his church of the Holy Trinity of Canterbury, for the reason that one R. held of him these tenements by fealty and by suit etc. and by the yearly services of etc., of which services he was seised etc. as by the hand of his very tenant; and that the said tenements ought to revert to [him] for that R. committed felony and therefor was hanged.

Denom. Where and before whom and of what felony attainted?

Passeley. At C., before W. de B. justice, for divers specific offences, in 33 [Edw. I.].

Denom. Of what felony was he attainted?

Passeley. No need to say that, for we say that he committed felony for which he was hanged.

Denom. You must say for what felony, for your writ says that he committed *feloniam*, not *felonias*, and, if you specified the felony, we might answer that of that felony he was acquitted. Besides, he might be hanged and yet his son might have recovery by the mort-dancestor, as in case [he were hanged] for receipt [of a felon] and the principal is not attainted, or if he were hanged for the death of a man who is still living.

BEREFORD, C.J. Can you show by law that there is need to specify the felony? Even if they specified one felony, and it was found [that he was hanged] for another, the lord would have the escheat.

Denom. At M. in 30 [Edw. I.] he was arraigned for the death of one B. and put himself [on the country] for good and ill and was acquitted, and for no other felony was he arraigned or attainted.

BEREFORD, C.J. Then you concede that for this felony he was attainted and hanged on another occasion.

Denom. No, I do not say that. I say as before.[1]

BEREFORD, C.J. Suppose that a man has the King's charter [of pardon,] but has forgetfully left it at home, and that he is arraigned in court for the felony, and has not his warrant in court, shall not he be hanged?[2]

[1] Apparently Denom had carefully chosen a phrase which would be true if the facts were those suggested by the chief justice.

[2] Even though he has pleaded the pardon on another occasion. See the preceding report.

Denom. Yl ne fuist mye atteint de la felonie etc.

Pass. Nous vouchoms record, et le record serra lundy ceinz.

Denom. Ceo n'est mye jour d'avoir record en play de terre.

Et dictum fuit ei q'il avereit jour de terme.

4c. CANTERBURY (ARCHBISHOP OF) *v.* DYER.[1]

Robert Erceveske de Canterbirie porta sun bref d'eschete vers un Joan le Tinturer e W. le Fevere[2] de iiij. acres de terre en N., les queux un G. de lui tient par fealté e suite de sa court de N. de iij. semaines en iij. semaines, des queux services il fust seisi etc., e les queux a lui deivent revertir com sun droit e le droit de sa eglise de la Trinité de Canterbiré e sa eschete, pur ceo qe le dit G. fist felonie, pur la quele il fust pendu.

Hed. defendit e demanda la cause de la felonie.

Herle. Il fist felonie pur qei il fust pendu devant Sire W. Bereforde e ses compaignons a Circestre.

Hedone. Il est mester qe vous nous diez, qar nous avoms veu le auncestre estre pendu e le heir rescoverir sun heritage par le mortdancestre.

Touth. Nous avoms conté vers eux q'il fist felonie etc., e il ne dedient mie la felonie. Jugement de eux com de noun defendu.

Bereforde. Il vous dient q'il fist felonie pur la quele il fust pendu devant moi e mes compaignons. Dites autre etc.

J. Denham dist qe celui G. fust endité de la mort W. le Chesemaker pur la quele il fust arené devant Sire Henri Spigurnel e ses compaignons l'an xxx. pere nostre seignour le Roi qe ore est a C., dount il passa quites par jugement, e qe unqes ne fust endité de autre felonie : prest etc.

Bereforde. Il puet ester assemble a meuz de mounde q'il fust arené devant Sire Henri etc. e pus devant moy etc., qar il puet estre de lui com avynt de un home qe fist felonie e purchasa la chartre le Roi de sa pees, e pus vient su[3] la corone e lessa sa chartre a l'ostiel, e fust arené de la felonie et dit q'il avoit chartre le Roi al hostiel, e pur la reconissaunce de la felonie, e pur ceo q'il n'avoit sa chartre en

[1] Text of this third version from *Y*, f. 123. [2] *Or* Fenere. [3] *Sic Y.*

Denom. Never attainted of the felony etc.

Passeley. We vouch the record, and it will be here on Monday.

Denom. That is not a day for the production of a record in a plea for land.

He was told that he would have a day in term time.[1]

4c. CANTERBURY (ARCHBISHOP OF) *v.* DYER.

Robert Archbishop of Canterbury brought his writ of escheat against one John Dyer and W. Smith for four acres of land in N. which one G. held of him by fealty and suit to his court of N. from three weeks to three weeks, of which services he was seised, and which [tenements] ought to revert to him as his right and the right of his church of the Trinity of Canterbury and his escheat, for that G. committed felony and therefor was hanged.

Hedon defended and asked the nature of the felony.

Herle. He committed felony for which he was hanged before Sir W. de Bereford and his fellows at Chichester.

Hedon. It behoves you to tell us [the nature of the felony], for we have seen the ancestor hanged and his heir recover his heritage by the mortdancestor.

Toudeby. We have counted against them that he committed felony etc., and they do not deny the felony. Judgment against them as undefended.

Bereford, C.J. They tell you that he committed felony and for it was hanged before me and my fellows. So say something else.

J. Denom. G. was indicted for the death of W. Cheesemaker, and for this he was arraigned before Sir Henry Spigurnel and his fellows in 30 [Edward I.] at C., and thereof he went quit by judgment, and never was he indicted for any other felony.

Bereford, C.J. The two things can stand together perfectly well, that he was arraigned before Sir Henry and afterwards before me; for it may have chanced to him as it chanced to a man who did felony and obtained the King's charter of peace, and afterwards came [into court][2] and left his charter at home, and was arraigned of the felony, and said that he had the King's charter at home, and, because of the confession of felony and because he had not the charter at hand, he was hanged before nightfall. So I say [in your case].

[1] Or perhaps that he would have one of the usual adjournments to another term. [2] The text at this point is obscure.

poigne il fust pendu devant le seir. Issi dye jeo etc. Pur ceo dites autre chose, ou par le sacre dieu nous dirroms autre etc.

J. Denham defendit e dist q'il ne fust unqes atteint devant Sire W. Bereforde : prest etc.

Herle. Q'il fust atteynt etc. nous vouchoms recorde.

Et habeant recordum in octabis S. Martini.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 133d, Suss.

Robert Archbishop of Canterbury, by his attorney, demands against William le Teynturer de la Clyve iuxta Lewes[1] and John le Fevre de Ryngmere four acres of land in Suthmallinge,[2] which Simon Lokere held of him, and which ought to revert to him as his escheat, for that Simon did felony, for which he was hanged. The demandant says that, whereas Simon held of him the four acres by fealty and the service of eighteen pence per annum and by doing suit to his court of Lakefeld from three weeks to three weeks, and that of this fealty and suit the Archbishop was seised by Simon's hand as of fee and of the right of his church of Christ of Canterbury, and of the said rent in his demesne as of fee and of right, in time of peace, in the time of Edward I., and which tenements ought to revert to him as his escheat, since Simon committed felony, for which [he was hanged, the tenants deforce him thereof]. (*Note continued on opposite page.*)

5. ANON.[3]

Assise, ou piert qe ceo est bare a dire qe le piere morust seisi, après qi mort il entra cum fitz et heir, et demaundoms jugement si le cosyn countre le fiz etc., sauncz conustre possessioun al altre.

Warryn de Starlynge[4] porta l'assise vers J. le fitz R.[5]

Toud. Ceaux[6] tenemenz furent en ascun temps en la seisine un R.,[7] qi morust seisi, après qi mort J. entra come fitz et heir en soun heritage ; et demaundoms jugement si vous q'estes cosyn cesti R. devetz al assise avenir sauntz moustrer title etc.[8]

Denom. R.[9] morust seisi sauntz heir de soun corps, après qi mort W.[10] entra come cosyn et[11] heir et seisi fust tauncqe par J. disseisi.

Toud. J. est fitz R., et einz est en soun heritage, et vous ne dites riens encountre sa persone qe luy freit nounable, issint q'il ne

[1] Cliff Hill, outside Lewes. [2] Mod. South Malling, close to Lewes. [3] Text from *A* : compared with *D*, *M*, *P*, *S*, *T*. [4] Sargill *M*, *S*, *T* ; Schargill' *P*. [5] Johan le fitz Rauf *M*, *P*, *S*, *T*. [6] assise ne deit estre qe les *M*, *P*, *S*. [7] Rauf *P*, *T* ; Rohande *S*. [8] si assise deit estre *M*, *P*, *S*. [9] Rohande *S*. [10] J. *D*, *M* Johan *P*. [11] *Ins.* plus procheyn *S*.

Therefore say something else, or Sacre Dieu ! we shall have something else to say.

J. Denom defended and said that he was never attainted before Sir W. Bereford : ready etc.

Herle. We vouch the record to prove that he was attainted.

Let them have the record on the octave of S. Martin.

Note from the Record (*continued*).

William and John, by their attorney, after formal defence, deny that Simon did any felony for which he was hanged, as the Archbishop says ; and this they are ready to aver etc.

The Archbishop says that before William de Bereford and his fellows justices of [Edward I.], assigned to hear and determine divers felonies and trespasses in the said county at Chichester, on the morrow of St. Hilary A. R. 34, Simon was convicted of felony (*de felonia*), for which he was hanged ; and this he is ready to aver by the record of the rolls of the said justices in the time aforesaid.

Therefore a day is given to the parties here on the morrow of St. Martin, and in the meantime be the rolls searched (*scrutentur*) which are in the custody of the said W. de Bereford.

5. ANON.[1]

As a bar to an assize of novel disseisin, the defendant is allowed to plead his entry as son and heir of one *X.*, without confessing in the plaintiff any seisin, but allowing him some colour of right as a cousin of *X.*

Warin of Starling brought the assize [of novel disseisin] against John, son of Ralph.

Toudeby.[2] These tenements were heretofore in the seisin of one Ralph, who died seised, and after his death John entered as son and heir into his heritage ; and we demand judgment whether you, who are cousin of Ralph, should get to the assize without showing title.

Denom. Ralph died without an heir of his body, and after his death Warin entered as cousin and heir, and was seised until disseised by John.

Toudeby. John is son of Ralph and is 'in' his inheritance, and you say nothing to disable his person or show that he could not be

[1] Proper names uncertain.

[2] Some books give 'An assize there ought not to be.'

pout estre heir, ne[1] ne ditez[2] pas q'il n'est[3] fitz etc. Jugement, si celuy q'est plus loyngtisme[4] en le saunk, sauntz moustrer[5] title coment fraunctenement luy soit acru, pusse a l'assise avenir.

Scrop. Issint poetz vous dire qe vostre fitz demene fust einz com fitz; et ceo n'est riens a luy conustre[6] einz q'il est[7] plus prochayn heir du saunk, et seisi fust[8] tauncqe etc. Et ceo veot il averir et qe R. morust sauntz heir etc.

Toud. ut prius.[9]

Et postea[10] non fuit prosecutus.[11]

6. ANON.[12]

Assise de novele disseisine, ou piert qe lyveré doune fraunctenement et chartre n'est qe testmoignaunce de doun.

En une assise de novele disseisine ou le tenaunt dit q'il entra par soun feffement et nyent par disseisine,[13] l'assise dit qe le playntif enfeffa le tenaunt a terme de sa vie sauntz chartre de veu de veysins[14] et luy liverast la seisine.

Herle, Justice. Lyveré doune fraunctenement et chartre n'est qe testmoignaunce de doun. Et purceo etc. q'il ne preigne.[15]

7. ANON.[16]

Mort d'auncestre: si averement seit joint a toler voucher et passe countre le demaundaunt, le voucher estera et il a mercye.

Mordauncestre, ou le tenant vocha a garant enfanz deinz age: et stetit: et le demandant fut en la mercy quia contraplacitavit vocationem.

Un A. porta son assise de mort d'auncestre vers le Priour de Nostre Dame de Soutwerk[17] de la mort son uncle. Le Priour voucha a

[1] et *D.* [2] dedites *M, S.* [3] est *D.* [4] lointein *P.* [5] moustre *A.* [6] countrepleder *M*; a contrepleder *P, S*; riens encountre lui *T.* [7] einz est a luy qil est *M, P, S.* [8] *Om.* fust *M, P, S.* [9] primus *A.* [10] Et W. *P.* [11] Et postea fuit non prosecutus *D.* [12] Text from *A*: compared with *D, M, P, S, T.* [13] A. porta l'assise vers Clement de la Grue de certeyns tenemenz. Denom. A tort port il ceste assise qe nous entrames par son feffement demene *P*; *sim. M, S, but* de la Grene *or* Greue. [14] chartre devant veysyns *D, P, S.* [15] qe Clement a Deu et A. nil capiat per breve suum *P*; *sim. S.* [16] Text from *A*: compared with *D, M, P, S, T.* [17] Deverwyk *D.*

heir, and you do not say that he is not son etc. Judgment, whether one who is further off in blood can get to the assize without showing a title by which the freehold accrued to him.

Scrope. In that way you [Toudeby] might say that your own son was 'in as son.' And it is not for [the plaintiff] to counterplead[1] this assertion; it is for him to allege that he was next heir in blood, and that he was seised until [disseised by the defendant]. And he will aver this, and that Ralph died without an heir [of his body].

Toudeby repeated what he had said.

Afterwards [the plaintiff] was nonsuited.

6. ANON.

In an assize of novel disseisin the defendant pleads a feoffment without charter, and this is found by verdict.

In an assize of novel disseisin the tenant said that he entered by [the plaintiff's] feoffment, and not by disseisin.[2] The assize said that the plaintiff enfeoffed the tenant for term of his life without charter, in the view of his neighbours, and delivered him seisin.

Herle, J.A.[3] It is livery that gives the freehold, and a charter is but a witness of the gift. Therefore [the Court awards that the plaintiff] take nothing.

7. ANON.[4]

A prior's predecessor is not an ancestor within the meaning of Stat. Westm. I. c. 40. When in a mortdancestor a voucher is counterpleaded and the assize is taken in form of a jury and finds for the tenant, the judgment is that the voucher stand and the plaintiff be amerced.

One A. brought his assize of mortdancestor against the Prior of Our Lady of Southwark on the death of his uncle. The Prior vouched

[1] Or 'to confess.' The argument is compressed and difficult.

[2] In one version the tenant's name appears as Clement de la Grue, Grene, or Greve, and Denom is of counsel for him.

[3] Herle seems to be acting as justice of assize.

[4] Proper names uncertain.

garraunt Margerie et J.,[1] filles et heirs[2] Hugh de Mort[imer], deynz age ensemblement ove T. de B. de Corn'[3] lour barouns.

Denom. Voucher ne poetz, qar vostre predecessour fust le premir q'entra en lez tenemenz après la mort nostre uncle, de qi mort etc.[4]

Hunt. Statut ne fait pas mencioun de predecessours, einz de auncestres. (Et fut le statut[5] trové ensi etc.[6])

Denom. Unqore ne devetz vowcher, qe nous voloms averer qe H. de M.,[7] qi heir vous avet vouché, n'avoyt rien en les tenemenz pus la mort nostre auncestre en demene ne en service. Prest etc.

Hunt. L'auncestre celes[8] qe nous avoms vouché, pus la mort vostre auncestre nous enffeffa de mesmes les tenemenz en pure et perpetuele almoigne, et obliga etc. Prest etc.

Et alii econtra.[9]

L'assise en fourme de juré[10] dit qe l'auncestre le vouché[11] fust seisi.

Ing.[12] rehercea[13] et garda[14] qe le voucher estust, et q'il fust amercyé pur le countrepleder etc.[15]

8. ANON.[16]

Mort d'auncestre, ou bastardie alleggé en la persone le demaundaunt : serra maundé a court christiene, et qaunt la court en certifié, il avera resumounce vers le tenaunts, et si un demaundaunt seit mort il aleraunt sauncz jour.

Johan[17] et Isabel[18] sa femme, Thomas Champioun et C.[19] sa femme porterent le mort d'auncestre vers William de C. et S.[20] sa femme, qe disoient qe Isabel[21] fust bastard. Par qei ele siwit al l'evesqe. Le quel certefia la court le Roi q'ele fust mulleré. Et pus siwist une resumounce. Al jour de la resumounce retourné W. et S. furent essoinés de service le Roy. L'assoigne nyent alowé pur S. Par qei le petit *cape* fust issue[22] et retorné.[23] A quel jour[24] un de les

[1] Johane *M*, *P*; Jone *S*. [2] fitz et heir *A*, *D*, *T*. [3] Thomas Bigenore et Geffrei de Cornewaille *M*; *sim. P*, *T*, *S*. [4] nous portoms ceste assise *M*, *P*, *S*. [5] *Ins.* lue et *S*. [6] *Om.* this sentence *A*, *D*, *T*. [7] R. *A*. [8] les anc' celi *P*; launc' cel *S*. [9] End of case *T*. [10] *Om.* en . . . jure *S*. [11] vouch' *A*, *M*; voch' *P*; les vouch' *S*. [12] Ingham *P*. [13] *Ins.* le proces *M*, *P*, *S*. [14] agarda *P*, *S*. [15] *Ins.* et expectet etatem *P*, *S*. [16] Text from *A*: compared with *D*, *M*, *P*, *S*, *T*. [17] Absolon *S*. [18] J. *S*. [19] Clemente *M*; Clemence *P*; Clement *T*. [20] Sarre *M*, *P*; Sare *S*. [21] Johan *P*; J. *S*. [22] agarde *T*. [23] le Roy. Rog. Pur ceo qe lassone ne gist my pur Sare il pria le grant cape par sa defaute *S*, [24] *Ins.* fut tesmoigne qe *M*, *P*.

to warranty Margery and Joan, daughters and heirs of Hugh of Mortimer, who were within age, together with their husbands.

Denom. You cannot vouch them; for your predecessor was the first to enter after the death of our uncle, upon whose death [we bring this assize].

Huntingdon. The Statute says nothing of predecessors; it speaks only of ancestors. (The Statute was found to be as he said.)

Denom. Once more, you cannot vouch; for we will aver that Hugh of Mortimer, whose heir you have vouched, had nothing in the tenements either in demesne or in service after the death of our ancestor. Ready etc.[1]

Huntingdon. The ancestor of the vouchees after the death of your ancestor enfeoffed us of these tenements in pure and perpetual alms and bound [himself and his heirs to warranty]. Ready etc.

Issue joined.

The assize was taken in the manner of a jury and found that the ancestor of the vouchees was seised.

Inge, J.A.,[2] rehearsed the process and adjudged that the voucher stood and that [the plaintiff] be amerced for counterpleading it.

8. ANON.[3]

The process when an issue of bastardy is sent to the Court Christian illustrated. Abatement of an action by the death of one of the demandants. A woman cannot be essoined for the king's service.

John and Isabel his wife, and Thomas Champion and Clemence his wife, brought the mortdancestor against William of C. and Sarah his wife, who said that Isabel was bastard. Therefore she sued a writ to the bishop, and he certified the King's Court that she was legitimate. Then she sued a resummons. At the day of the resummons returned the tenants were essoined for the king's service. The essoin was not allowed for Sarah. Therefore the little *cape*[4] issued

[1] Having failed to bring the case under the first part of Stat. Westm. I. c. 40, Denom turns to a later part of the same chapter.

[2] Apparently not Ingham, but William Inge, who is often employed as justice of assize.

[3] Proper names uncertain.

[4] One book speaks of the great *cape*.

demaundauntz fust mort. Par qei les parties alerent a Dieu sauntz jour etc.

9A. ATTECROUCH *v.* FROST.[1]

Entré *dum infra etatem*, ou piert qe, tut ne face jeo mencioun del heir qe survesquit l'auncestre, si ele n'ust esté seisi ou fait chose qe moy barreit, le counte est aset bone.

Johan atte Crosse[2] porta soun bref d'entré vers R. de F.[3] et Christiane[4] sa femme des tenemenz qe A.[5] lessa a[6] C. taunt come ele fust dedenz age. Et fist le resort de A., purceo q'ele morust sauntz heir etc., a la seor le tresaiel et de cele tauncqe a luy.

Denom. La ou il fount lour resort etc. tauntqe etc., ele avoyt une fille C.[7] par noun de qi il n'ount fait mencioun[8] en countaunt. Jugement.

Toud.[9] Ele n'avoyt nulle tiele fille qe tendist[10] estat. Prest etc.

Denom. Donqes grauntez vous q'ele avoyt une fille, mès ele[11] ne survesquit pas, et ceo est un bref de dreit mixt,[12] ou il covent faire mencioun de touz[13] du saunk.[14] Jugement.

Berr. La nature de cesti bref n'est plus haut qe n'est un bref de possessioun, ael ou besaiel.

Denom. C.[15] survesquist A.[16]. Prest etc.

Hedone. A.[17] morust sauntz heir etc. saunt ceo qe C. ne fust seisi après sa mort, et[18] unqore est en pleyne vie. Prest etc.

Denom. Vous supposet par counte qe après la mort A.[19] le droit resorti etc., et si C. survesquist, donqe le dreit[20] descendi a C., et issint vostre counte faux. Jugement. Estre ceo, si C. qe survesquist eust fait felonie cele felonye ly barr[eit].[21]

Berr.[22] Vous ne poetz par cele omissioun[23] avauntage avoir, si vous ne poietz moustrer qe ele fust seisie après sa mort ou aultre choce fait qe les eust[24] barré d'actioun.

[1] Text from *A*: compared with *D*, *M*, *P*, *R*, *T*. [2] Trees *M*; Cros *R*; Johan de A. *P*. [3] Robert de Frest' *M*; Robert Forst *R*; Robert Spyllepayn *P*. [4] Alice *P*. [5] Alice *M*, *R*, *T*; Beatrice *P*. [6] *Ins.* mesme cele *R*. [7] Cristiene *M*, *P*, *R*. [8] il ount fet omissioun *R*, *T*. [9] Hedon *R*. [10] tendi *M*, *P*; tendit *R*, *T*. [11] qele *M*, *P*. [12] *Ins.* etc. *M*, *P*, *R*. [13] *Ins.* ceux *R*; ceus *P*. [14] de tenantz du saunke *D*. [15] Cele Cristiene *R*, *P*. [16] Alice *R*; Beatrice *P*. [17] Beatrice *P*. [18] ou *M*, *P*, *R*. [19] Beatrice *P*. [20] *Ins.* apres la mort Alice *R*. [21] ly ust barre *R*. [22] Bus. *M*. [23] poiez de [par *T*] cele conisaunce *D*, *M*; *sim.* *P*, *T*. [24] dut *R*.

and was returned. At that day one of the demandants was dead. So the parties were bidden farewell without day.

9A. ATTECROUCH *v.* FROST.[1]

In tracing a pedigree in a possessory action, such as entry *dum fuit infra aetatem*, it is not a fatal error to omit a person who stood in the line of descent, provided that he never was seised or did anything that would bar the demandant.

John atte Crosse brought his writ of entry against Robert de Frost and Cristina his wife for tenements which Alice leased to Cristina while [Alice] was within age. And a resort was made from Alice, for that she died without an heir [of her body], to the sister of her great-great-grandfather and thence to [the demandant].[2]

Denom. Whereas they have made a resort etc. as far as etc., Alice had a daughter, Cristina by name, of whom they have made no mention in their count. Judgment.

Toudeby. She had no such daughter who attained an estate.[3] Ready etc.

Denom. Then you admit that she had a daughter, though she did not survive. This is a writ of right mixed [with possession], in which it behoves you to mention all who are of the blood. Judgment.

Bereford, C.J. The nature of this writ is no higher than that of a possessory writ, ael or besael.

Denom. Cristina survived Alice. Ready etc.

Hedon. Alice died without an heir of her body, without this (*absque hoc*) that Cristina was seised after her death or[4] is still alive. Ready etc.

Denom. You suppose by your count that after the death of Alice the right resorted etc.; but, if Cristina outlived Alice, the right descended to Cristina, and so your count is false. Judgment. Besides, if Cristina who survived had committed felony, that felony would bar you.

Bereford, C.J. You cannot take advantage of the omission, unless you can show that [Cristina] was seised after [Alice's] death or did something which would have barred the demandant from the action.

[1] Proper names from the record.

[2] For the true pedigree, see our note from the record.

[3] In this context *tendre* for *attendre* (to wait for) is often used. We translate by 'attain'; but do not suggest that this word is an exact translation.

[4] The *ou* seems more probable than *et.*

Denom. Les tenemenz demaundez sount en [1] gavilkynde, dount par les usages de gavilkynde [2] qaunt ele fust de xv. aunz etc. ele poet aliener solome les usages ; [3] et qe de plus, prest etc.[4]

Et sic pendet etc.

9B. ATTECROUCH *v.* FROST.[5]

Precipe Roberto Frost et Cristine uxori eius quod iuste etc. reddant Johanni Attecrouche unum mesuagium et xxiiij. acras terre cum pertinenciis in villa de S. Nicholao iuxta Northwode in insula de Taneto,[6] quod clamat esse ius et hereditatem suam, et in que eadem Cristina non habet ingressum nisi per Aliciam filiam Johannis Attehale consanguineam predicti Johannis, cuius heres ipse est, que illa ei dimisit [7] dum infra etatem fuit etc. E conta qe Alice fust seisi en son demene com de fee e de droit en temps etc., les espleez etc. ; de Alice resorti le droit a Robert com a cosin e heir, frere Gervase besael Alice ; de Robert a Helewyse com a fille e heir ; de Helewyse a Johan ke ore demande com a fiz e heir ; e en les queux ele n'ad entré etc.

J. Denham defendit e demanda jugement desicom cele Alice avoit une fille Cristine de quoi il ad fet omission etc.

Hedon. Nous dioms qe cele Cristine ne tendit unkes estat, par quoi sa omission nous ne deit nuire.

J. Denham. Il ne dedient nent q'il ne avoit une Cristine, mès il dient q'il ne tendit unkes estat ; e nous jugement, desicom ceo est un bref de droit e il ont fet omission en le sanke.

Et ista fuit oppinio *Herle* et omnium servientium pro maiori parte, excepto *Passeley,* qui dixit *Hedon* quod teneret se audacter ; et sic fecit.

Et tunc *Bereforde* dixit : Jeo voille qe vous sachez trestouz qe nul bref d'entré ne est bref de droit, einz est en la possession coloré du droit, qar ceo est un bref de droit qe prent issue en le droit.

E pus a un autre jour *J. Denham* : Nous demandom uncore jugement de ceste descente, qar vous dioms qe cele Cristine tendi estat, e ceo est un bref de possession e demandoms jugement.

Hedon. Coment tendi estat ?

[1] de *R.* [2] *Ins.* ele fut de plein age *M, P, R.* [3] *Om.* etc. . . . usages *M, P, R.* [4] *Ins.* Et les autres, dedeinz age et deinz xv. aunz, prest etc. Et alii e contra *M* ; *sim. P.* Et les autres, dens age de xv. aunz, prest etc. *R.* [5] Text of this second version from *Y*, f. 92. [6] Caneto *Y.* [7] *Rep.* dimisit *Y.*

Denom. The tenements demanded are in gavelkind, and by the usages of gavelkind she was of age when she was fifteen[1] years old, and after that she could alienate.

[The other side said that she was within age and within the age of fifteen. And issue was joined.]

9B. ATTECROUCH *v.* FROST.

Command Robert Frost and Cristina his wife that justly etc. they render to John Attecrouche a messuage and twenty-four acres of land with the appurtenances in the vill of St. Nicholas by Northwode in the isle of Thanet, which he claims to be his right and inheritance, and into which Cristina has no entry save by Alice daughter of John Attehale, cousin of the said John, whose heir he is, who demised them to her while she was under age etc. And he counted that Alice was seised in her demesne as of fee and of right in time etc. [taking] esplees etc.; and from Alice the right resorted to Robert as cousin and heir, brother of Gervase great-grandfather of Alice; from Robert to Helewise as daughter and heir; from Helewise to John, the demandant, as son and heir; and into which she [Cristina] has no entry etc.

J. Denom defended and demanded judgment on the ground that Alice had a daughter Cristina of whom he has made omission.

Hedon. We tell you that this Cristina never attained an estate, so the omission of her ought not to hurt us.

J. Denom. They do not deny that there was a Cristina, but they say that she never attained an estate. Judgment, since this is a writ of right and they have made omission in the blood.

And this was the opinion of *Herle* and, for the greater part, of all the serjeants, except *Passeley*, who told *Hedon* boldly to stick to his point. And so [*Hedon*] did.

Then said Bereford, C.J.: I wish all of you to understand that no writ of entry is a writ of right, but it lies in the possession coloured by right; for that [only] is a writ of right which takes issue in the right.

Afterwards at another day, *J. Denom*: Again we demand judgment of this descent, for we tell you that this Cristina did attain an estate, and this is a writ of possession, and we demand judgment.

Hedon. How attained she an estate?

[1] We have found no variant on 'fifteen.'

J. Denham. Survesqui Alice issi que le fee reposa en sa persone e sa quitclame e sa felonie serroit barre a vous. Jugement de ceste omission.

Hedon. Nous dioms qe Cristiene ne fust unqes seisi de nostre demande issi qe sa omission nous deive nuire.

Bereforde a *J. Denham* Il vous dient qe Cristine ne fust unkes seisi etc., e nous entendoms par de cea qe tendre estat en bref de possession ceo est seisi de la demande. Volez l'averement? Ou nous dirroms autre chose.

J. Denham. Nous dioms qe C. survesqui Alice, dont s'aquitance ou sa felonie serroit barre a eux, e de cele omission prioms vos avisemenz.

Hervi. E nous agardoms qe vous diez autre chose.

J. Denham defendit etc. e dist qe Alice qaunt ele lessa fust de xv. anz e de plus, e issi de plein age solom les usages de Kente.

Hedon. Nous sumes cy a la comune lei e demandoms jugement si de tiel age com il ont conu puet ele lees faire.

Bereforde. Si nous fuissoms en l'eyre de Kente, il nous convensit allower les usages; e pur quoi ne froms nous icy etc.?

E pus *Hedon* dist q'ele ne fust nent de plein age solom usage du pays, e prest etc.

Et alii contrarium.

9c. ATTECROUCH *v.* FROST.[1]

Un A. porta bref de entré vers B. 'in que non habet ingressum nisi per W. soun auncestre qui illud dimisit ad terminum qui preteriit.' Et fit un resort de W. a R. etc. frere etc. descendant a ly.

Denom. Sire, nous vous dioms qe C. avoit un fiz[2] H. de qi il ad fet omissioun.

Hedon. Il n'avoit nul qe survequit.

Ber. Avoit il un tel ou noun?

Denom. Yl avoit un H. fiz C. et ceo est un bref mixt en le dreit, et il ad fet omissioun du sank. Jugement.

[1] Text from *P*, which also gives the first report. Not found elsewhere. [2] *Om.* fiz *P*.

J. Denom. She outlived Alice, so that the fee reposed in her person, and her quitclaim or her felony would be a bar to you. Judgment, of this omission.

Hedon. We tell you that Cristina was never seised of our demand in such wise that her omission should hurt us.

Bereford, C.J., to *J. Denom.* They tell you that Cristina never was seised etc., and we here understand that in a writ of possession by 'attaining an estate' is meant a seisin of the demanded tenements. Will you take the averment? If not, we shall have something else to say.

J. Denom. We say that Cristina outlived Alice, so that her release or her felony would be a bar to them. So as to the omission [of her] we pray your opinion.

Stanton, J. And we award that you plead over.

J. Denom defended, and said that Alice when she demised was fifteen years old and upwards, and so of full age according to the usage of Kent.

Hedon. We are here at the common law and demand judgment whether at the age they have mentioned she could make a lease.

Bereford, C.J. If we were in the eyre of Kent, it would behove us to allow the usages [of Kent]; and why should we not do that here?

Afterwards *Hedon* said that she was not of full age according to the usage of the country: ready etc.

Issue joined.

9c. ATTECROUCH *v.* FROST.[1]

One A. brought a writ of entry against B., saying 'into which he has no entry except through W. his [B.'s] ancestor, who demised it for a term that has expired.' He made a resort from W. to R. etc. his brother etc. with descent to himself.

Denom. Sir, we tell you that [W.] had a son H., of whom he has made omission.

Hedon. He had no son who survived him.

Bereford, C.J. Had he such a son?

Denom. He had a son H. This is a writ [of possession] mixed with right and he has made an omission in the blood. Judgment.

[1] In spite of obvious differences, we suggest that this is a simplified version of the preceding case.

Hedon. Nous sumes en un bref de entré a demander de la seisine W. qe lessa etc., et n'entendoms mye qe nous eyoms mestier etc. sil n'ust estat atendy.

Ber. Il ne bosoygne plus a fere mencioun en ceti bref de celi qe n'atendy estat qe en bref de possessioun.

Hedon. William n'avoit nule issue. Prest etc.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 148d, Kent.

John atte Cruche, by Richard de Chellefeld his attorney, demands against Robert Frost and Cristina his wife one messuage, twenty-four acres of land, and five acres of marsh in the vill of St. Nicholas next (*iuxta*) Northwode, in the Isle of Thanet, as his right and inheritance, and into which Cristina has no entry unless by Alice, daughter of John atte Hale, cousin of [the demandant], whose heir he is, who demised them to her [Cristina] while she [Alice] was under age. [The demandant] says that Alice, his cousin, was seised of the tenements in her demesne as of fee and right in time of peace, in the time of [Edward I.], taking esplees to the value etc.; and from her, because she died without an heir of her body, the right resorted to one Robert as cousin and heir, brother of Gervase, father of Thomas, father of John, father of Alice; and from Robert the right descended to Helewysa as daughter and heir, and from her the right

10. VESCY *v.* ITHUNESSONE.[1]

Cui in vita, ou la femme fust receu d'alegger continuaunce de seisine countre sa chartre demene, et l'altre chacé a dire q'il entra par ly soul.

Johanne[2] de Cytone[3] porta soun *cui in vita* vers un W., en les queux le tenaunt n'avoyt entré sy noun par H. soun baroun[4] etc.

Scrop.[5] Johanne sole nous feffa par ceste chartre[6]; et, si nous fussoms empledetz, nous vous vochassoms a garraunt. Jugement etc.

Hedon.[7] Dont il entra par Johane[8] et nient par H.,[9] quod est contrarium actioni.[10] Nous voloms averrer nostre bref.

Scrop. Est ceo vostre fet ou ne mye?

Denom.[11] Quel fait q'il mettent[12] avaunt, Johanne continua soun

[1] Text from *A*: compared with *D*, *M*, *P*, *R*, *T*. [2] Johan *M*, *P*; Une Johane *R*. [3] Hospt' *M*; Hopt' *T*. [4] *Ins.* cui ipsa *M*. [5] Wilb. *M*, *R*; Scrop. *T*. [6] *Ins.* et obliga lui etc. *M*. [7] *Om.* the next two speeches *A*, *T*; *ins.* *M*, *D*, *R*. [8] Johan *M*. [9] nostre baroun *D*; A. *M*. [10] *Om.* quod . . . actioni *D*, *R*. [11] Hedone *D*, *M*, *T*. [12] mette *M*.

Hedon. We are in a writ of entry demanding on the seisin of W. the lessor, and we do not think that we have need [to mention anyone] unless he attained an estate.

Bereford, C.J. There is no more need in this writ than in a writ of possession to mention one who did not attain an estate.

Hedon. W. had no issue. Ready etc.[1]

Note from the Record (*continued*).

descended to John, the now demandant, as son and heir; and into which etc.

Robert and Cristina, by Henry le Parker their attorney, after formal defence, confess that Cristina had entry into the tenements by Alice; but they say that the tenements are of the tenure of gavelkind, and it is the custom of that tenure that when one attains the age of fifteen years, it is lawful for him to enfeoff other people (*alios*) of those tenements as though he were of full age (*tanquam plene etatis*); and they say that at the time of the demise Alice was of full age according to the custom of that tenure; and this they are ready to aver.

John says that Alice was not of the age of fifteen years at the time when she demised the tenements to Cristina; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Martinmas.

10. VESCY *v.* ITHUNESSONE.[2]

In *cui in vita* the demandant is encountered by her own charter of feoffment with warranty. Notwithstanding the charter, she can aver that the tenant had entry by her husband.

[Idonea] brought her *cui in vita* against one W. saying 'into which the tenant had no entry save by (*per*) H. [the demandant's] husband etc.'

Scrope. [Idonea] while sole enfeoffed us by this charter, and, if we were impleaded, we should vouch you to warrant. Judgment etc.

Hedon.[3] Then [according to you] he entered by [Idonea] and not by her husband. That is contrary to our action, and we will aver our writ.

Scrope. Is this your deed or not?

Denom.[4] No matter what deed they produce, [Idonea] continued

[1] We do not expect this after the chief justice's remark. Can it be correct?

[2] Proper names from the record.

[3] This and the next speech are not in all our books.

[4] Or Hedon.

estat taunt com ele fust sole, et pus H. et li seisis jointtement taunqe H. aliena. Prest etc.

Berr. Ele fait vostre chartre de poy de[1] value si ele dit verité.[2] Dount si vous volez meyntenir vostre dit, il vous covent dire qe vous entrastes par J. et nyent par H.

Scrop. Qe nous entrames par J. sole.[3] Prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 177d, Linc.

Idonea, wife that was of Simon de Vescy de Foleteby, aforetime in the court of [Edward I.] before his justices here in the quindene of Michaelmas, A. R. 33, by her attorney, demanded against John Ithunessone de Hageworthingham a messuage in Hageworthingham as her right by the gift of Maud, daughter of Nicholas Wymerkessone, and into which John has no entry unless after (*post*) the demise which Simon, sometime husband of Idonea, whom in his lifetime she could not gainsay, made thereof to Hugh son of Walter son of Michael.

John, by his attorney, after formal defence, said that Hugh son of Walter had entry into the messuage not by Simon, sometime husband of Idonea, but by Idonea herself; and of this he put himself upon the country.

Issue was joined, and a *venire facias* was awarded for the quindene of Hilary. (*Note continued on opposite page.*)

11. ANON.[4]

Intrusioun ou le pere le demandant se avoit obligé a la garantie, et fut chacé a respondre a fet par agard.

Robert de M.[5] porta soun bref de intrusioun vers W. de K.,[6] en les queux il n'ad entré sy noun par etc. après la mort W. de C.[7] 'qui illas tenuit ad terminum vite' du lees[8] le piere le demaundaunt.

Pass. Ceaux tenemenz furent en aschun temps en la seisine un R.[9] ael le demaundaunt, qi heir etc., qe dona ceaux tenemenz a William nostre piere et a les heirs de soun corps issauntz, et[10] avoit un fitz T. piere le demaundaunt, qi en la seisine nostre piere[11]

[1] nul *M.* [2] si il dye verite le fet qe vous mettez avant est de nule value *R.* [3] par J. taunt com ele fut sole et nemye par G. auxi com vostre bref suppose etc. *R.* [4] Text from *A*: compared with *D*, *M*, *P*, *T* and with *R* (an. 4). Headnote from *P.* [5] Neutone *M*; Newetone *T*; Neuebold *R*; Robert Cardinal *P.* [6] Johan de Cardiall' *M*; W. de Cardall' *T*; Johan de Cadel *R*; Johan Pepe *or* Pope *P.* [7] W. Patriarche *P*; Will. de Kardoil *R.* [8] *Ins.* T. de Neutone *M*; T. Cardinal *P*; Thom de N. *R.* [9] Richard *M*, *T.* [10] *Ins.* Richard *M*, *R.* [11] seisine W. *M.*

her estate so long as she was sole, and afterwards she and her husband were jointly seised until he alienated. Ready etc.

Bereford, C.J. If what she says be true, then your charter is not of much value. So, if you desire to maintain what you have said, you must say that you entered by [Idonea] and not by her husband.

Scrope. We entered by [Idonea] while she was sole, [and not by her husband as your writ alleges.]

Issue joined.

Note from the Record (*continued*).

Afterwards the suit remained without day owing to the King's death, and was then resummoned, and, the process having been continued until the octave of St. John Baptist in 3 Edw. II., John comes by his attorney and Idonea comes not. And Lambert of Thrikyngham, before whom etc., sent here the verdict of the said jury in these words:—Afterwards, on Saturday in Mid Lent in 3 Edward II. at Coldestowe, before L. de Thrikyngham, John Goland knight being associated to him, Idonea comes and likewise John, by Walter de Thumelby his attorney, and likewise the jurors chosen by the consent of the parties; and the jurors say upon their oaths that Hugh entered the messuage by Idonea when she was sole and not by Simon, sometime her husband. Therefore it is considered that John go thence without day, and that Idonea and her pledges to prosecute be in mercy; let inquiry be made for the names of the pledges.

11. ANON.[1]

In answer to a writ of intrusion the tenant, alleging a gift in tail to his father by the grandfather of the demandant, relies on a deed of confirmation with warranty by the father of the demandant. To this deed the demandant has to answer.

Robert of Newton[2] brought his writ of intrusion against [John] saying 'into which he has no entry save by [intrusion] after the death of William, who held the tenements for term of life by the lease of the demandant's father.'

Passeley. Time was when these tenements were in the seisin of one Richard, grandfather of the demandant, whose heir [he is], who gave them to William our father and to the heirs of his body issuing; and [Richard] had a son, father of the demandant, who in the seisin

[1] Proper names uncertain.

[2] In one of our books (*P*) the characters in this story are called Robert Cardinal, Johan Pepe (for Pope?), and W. Patriarche. In another (*X*) we find Robert Cardinal, J. Patriarke, and W. Patriarke.

conferma [1] et obliga etc.; dount, s'il fust enpledé, il luy garr[auntireit]. Jugement, depus qe nous sumes heir [2] a qi la confermement fut fete ove la garrantie, si encontre le fet etc.[3]

Toud. Vous eussez [4] ij. faitz. Tenez vous a l'un.[5]

Herle. Nous pernoms al [6] confermement de vostre piere.

Toud. Nous sumes a issue de plee.[7] La ou nous dioms qe W. de K.[8] se abati etc.[9] la dient il qe William avoit doné [10] a luy et a ses heirs de soun corps issauntz. Qe W. de C. n'avoit qe terme de vie et qe W. de K.[11] se abatist. Prest etc.

Pass. Est ceo le fait vostre auncestre? [12]

Et fust chacé par la court a ceo.

Toud. Nient le fait W.[13] Prest etc.

Et alii econtra.

12. ANON.[14]

Quiteclamaunce après l'enqueste joynt.

Un A. demanda certein tenemenz vers B. et pleda al enqueste. Le jour qe l'enqueste deust passer B. mist avaunt une quiteclamaunce, et le demandaunt covenist [15] respondre au fet nent countreesteaunt le enqueste joynt. Et *Ber.* chacea Pauill' le Criour [16] r[espondre] au fet etc.

13A. HARTLAND (ABBOT OF) *v.* BEAUPEL.[17]

Meen porté vers celi a qi le tenant ne fut unqes atorné. Et fut le cas qe le feffour avoit aliené remenant de sa tenance.

Ou il voleit avoir lié la partie a l'acquitance par sun fet demene, qe voleit grant e confermacion de autri doun sanz attendanz : seignurie ne poeit il attacher en sa persone : ergo ne acquitance etc.

Un Abbé porta un bref de acquitaunce [18] vers A. et counta par *Migg.* etc. q'atort etc. de custum [19] et des services qe W. lui demande

[1] *Ins.* le doun *M*; le doun soun pere *P*, *R*. [2] *Ins.* W. *R*. [3] Jugement etc. *A*, *D*, *T*. Text from *M*; *sim. P*; *sim. R but add* a ore rien pusset demander. [4] usez *M*, *P*, *T*. [5] Toud. Il sount en les deux fets deus clauses de garantie, a quel fet vous volet tenir *R*. [6] Nous tenoms al un al *T*. [7] *Ins.* qe *D*, *M*, *T*; qar *R*. [8] J. de T. *M*, *T*; J. de C. *R*. [9] apres la mort W. de Card' qe ceux tenemenz tynt a terme de vie *M*; *sim. P*, *R*. [10] *Om.* done *R*. [11] *Om.* K. *M*; et qe J. *T*; vie apres qy mort J. *R*. [12] pere ou noun *R*. [13] *Ins.* nostre pere *M*, *P*, *R*. [14] Text from *M*: compared with *P*. [15] convensit *P*. [16] Rog' Pikep' *P*. [17] Text of this first version from *M*: compared with *P*, *S*, *T*. Head-notes from *P* and *Y*. [18] de men *S*; de meen *T*. [19] custumes *P*.

of our father confirmed [the gift] and bound [himself and his heirs to warrant,] so that, if we were impleaded, he would be our warrantor. And since we are the heir of him to whom the confirmation was made with warranty, we pray judgment whether against the deed etc.

Toudeby. You make use of two deeds. Hold to one.

Herle. We hold to the confirmation by your father.

Toudeby. Then we are at issue. Whereas we say that [you] abated after the death of William our tenant for life, there you say that William had the tenements to him and the heirs of his body issuing. Ready to aver that William had only for term of life and that [you] abated.

Passeley. Is this the deed of your ancestor?

And the court drove them to that.

Toudeby. Not [our father's] deed. Ready.

Issue joined.

12. ANON.

A quitclaim produced after inquest joined.

One A. demanded certain tenements against B. and pleaded to inquest. On the day when the inquest was to pass, B. produced a quitclaim. The demandant had to answer to the deed, notwithstanding that the inquest was joined. And Bereford, C.J., drove [someone [1]] to answer to the deed etc.

13A. HARTLAND (ABBOT OF) *v.* BEAUPEL.[2]

The scope of the action of mesne considered. *Semble* that, although *A.* does not hold of *B.*, an action of mesne will lie for *A.* against *B.* if by a charter *B.* has confirmed *A.*'s estate in terms that imply that *A.* is to hold of *B.* and that *B.* is to warrant and acquit *A.* Can a seignory over a tenant in frankalmoin be effectually alienated, so that the benefit of the spiritual services is transferred by grant and attornment?

An Abbot brought a writ of acquittance (mesne) against A. and counted by *Miggeley* that wrongfully [he does not acquit him] of customs and services which W. demands from him etc. for his freehold

[1] See the two very different names on the opposite page.

[2] This case is Fitz. *Mesne*, 46. Proper names from the record.

etc. de franctenement etc. Et pur ceo à tort etc. qe la ou il tent de l'avauntdite A. un mees, une carué de terre, en pure et perpetuele aumoigne, par qei il lui deit acquiter etc., la vint l'avauntdite W. et ly demaunde homage etc. et suyte.

West. Qei avez de l'acquitaunce?

Migg. mist avaunt fet.

West. Acquiter ne lui devoms, qe il mesme de son eynde [1] gré ad fet a l'avauntdite W. escuage qe attret a lui homage, et il lui ad fet suyte etc. Jugement etc.

Malb. Veez cy le [2] fet qe tesmoigne qe vous estes lié a l'acquitaunce.

Fris. Nous conissoms bien qe c'est nostre fet, mès nous vous dioms qe vous estes chargé pus.

Toud. C'est un bref de dreit, et l'aquitaunce se lye en le dreit, et nous qe sumes Abbé ne pooms soul charger si noun pur nostre temps. Et vous biez par vostre excepcion vous ouster de l'aquitaunce pur touz jours; et si jugement si [3] fra, il [4] fra pur touz jours. Demandoms jugement si par nul attornement qe nous feymes [5] etc. pussez de ceste [6] aquitaunce estourtre.

Fris. Nous n'avoms rien en ceux tenemenz dont il demande ore etc.[7] en demene n'en service issint q'il put de nous ceux tenemenz tenir, ne nul de noz auncestres, la ou cesti bref gist naturelement vers celui q'est meen. Prest etc.

Scrop. Jeo ay enfeffé un homme tenendum de capitalibus dominis etc. et obliga moy a l'acquitaunce, il ne put mye [8] dereigner l'acquitaunce vers moy, pur ceo q'il ne put dire qe jeo fu [9] meen.

Malb. Le fet tesmoigne et suppose qe vous estes meen, et vous avez conu le fet et *per consequens* ceo q'est contenu en le fet etc.

Toud. ad idem. Si une dame enherité etc. enfeffe un Abbé de partie des tenemenz a tenir de lui en pure almoigne et ele [10] feit mesmes [11] les services outre, scil. pur l'entier, et ele aliene ceo q'ele tent a un autre, celui fet un acquitaunce a l'Abbé, par taunt il est tenu a l'aquitaunce auxi come la dame fut. Auxi par de cea; celui qe enfeffa vostre [12] auncestre nous acquita, et nous mettoms avaunt le [13] fet qe tesmoigne l'acquitaunce, le quel fet est conu. Jugement.

[1] eyne *P*; eyn de gree *S*; *sim. T.* [2] vostre *P.* [3] se *P*, *S*, *T.* [4] *Ins.* se *P.* [5] pussoms fere *P.* [6] deste *M.* [7] laquitance ne *S*, *T.* [8] rien *S*, *T.* [9] suy *S.* [10] *Ins.* mesme *P*, *S*, *T.* [11] *Om.* mesmes *P*, *S*, *T.* [12] *Or* nostre. [13] vostre *S*, *T.*

etc.: and wrongfully, for whereas [the Abbot] holds of A. a messuage and a carucate of land in pure and perpetual alms, concerning which A. ought to acquit him etc., there comes the said W. and demands of him homage etc. and suit.

Westcote. What have you for the acquittance?

Miggeley produced a deed.

Westcote. We ought not to acquit him, for of his own free will he has done to the said W. escuage, which draws to itself homage, and he has done suit. Judgment.

Malberthorpe. See here the deed[1] which witnesses that you are bound to the acquittance.

Friskeney. We fully confess that this is our deed; but we say that subsequently you charged yourself.

Toudeby. This is a writ of right, and the acquittance is laid as a matter of right, and we who are an Abbot can make no charge except for our own time; and you hope by your plea to exempt yourself from the acquittance for ever; and, if a judgment be made, it will be made for ever. We pray judgment whether, by reason of any attornment that we have made, you can extricate yourself from the duty of acquitting us.

Friskeney. We have nothing in the tenements concerning which he now demands [acquittance], neither in demesne, nor in service, in such wise that he could hold them of us; nor had any of our ancestors; whereas this writ by its very nature lies against one who is mesne. Ready etc.

Scrope. Suppose that I enfeoffed a man to hold of the chief lords etc. and I bound myself to an acquittance. Still he cannot deraign an acquittance against me, since he cannot say that I am mesne.

Malberthorpe. The deed witnesses and supposes that you are mesne, and you have confessed the deed, and consequently all that is in the deed etc.

Toudeby on the same side. If a lady with an inheritance enfeoffs an Abbot of part of the tenements to hold of her in pure alms, and she herself does the services over [to her lord] that she did before for the whole, and then she alienates what she holds to another, and he makes a [deed of] acquittance to the Abbot, thereby he is bound to acquittance just as the lady was. So in this case. He who enfeoffed your ancestor acquitted us, and we produce a deed[2] which witnesses the duty of acquittance, and that deed is confessed. Judgment.

[1] Or 'your deed.'

[2] Or 'your deed.'

Fris.[1] ut prius.

Pass. Nous dioms qe nous sumes destreint pur lour homage. Et demandoms jugement s'il ne nous deit acquiter.

Scrop. Les tenemenz furent en la seisine une Dyane, qe hors de sa seisine dona mesmes les tenemenz a l'Abbé a tenir de lui en pure et perpetuel aumoigne, et les services furent fetes pur l'alme Dyane et pur les almes les[2] auncestres et ses heirs, et le dreit de ceux services ne put passer hors de la seisine Dyane ne de ses heirs, si ceo ne fut par attornement de tenaunt, et le tenaunt[3] ne se attorna a nous et il ne se put attorner, et les priers[4] sount fetz touz jours pur l'alme cele qe dona etc. et a autre ne se put il attorner. Par qei il ne put estre autri tenaunt. Par qei il semble etc.

Toud. Dyane hors de sa seisine dona a nous les terres, et ele seisi de nous. Et pus ele vous enfeffa de[5] remenaunt ove ses[6] services. Dount depus qe vous avez estat[7] nostre feffour et vous estes lié a l'acquitaunce par vostre fet demene, il semble qe nous sumes vostre tenaunt.

Et alii ut supra. Et furent ajorné a iij. symaignes de Seint Michel. A quel jour—

Denom. Sire, les tenemenz dont il demandent cele acquitaunce ne sount del fee A. ne de sa seignurye. Jugement si cel bref vers nous[8] etc. Item si l'Abbé fut distreint par A., il porte[9] son replegiari, A. feit avowerie, l'Abbé put sauvement dire hors de son fee, qe l'Abbé ne s'attorna unqes a A. par qei il pout son tenaunt estre. Item il poet porter son bref vers l'eir Dyane a[10] dereigner le acquitaunce q'il demoert unqore son tenaunt.

Herle. Il ne dedient mye le fet qe tesmoigne q'il ount confermee le fet Dyane a tenir en pure et perpetuel aumoigne, par quel fet il sount lié a l'acquitaunce. Et demandoms jugement.

Scrop. Vostre dit prove qe le bref ne gist mye, par taunt com vous dites q'il conferme[11] et avez conu qe un autre dona les tenemenz qe demoert unqore meen, et depus qe nous ne sumes attorné a autre.[12]

Fris. ad idem. Si jeo enfeffe un homme a tenir de moy, et un estraunge conferme le doune et se oblige a l'acquitaunce, par taunt vous ne poez ore user bref de meen vers lui.

[1] *Om.* this and next speech *T.* [2] ces *P*; ses *S*, *T.* [3] *Ins.* unqes *P*, *S*, *T.* [4] prieretz *P.* [5] du *S*, *T.* [6] cez *P*; ces *S*; ses *T.* [7] lestat *P*, *S*, *T.* [8] *Ins.* gise *S*, *T.* [9] portast *S.* [10] et *S*, *T.* [11] conferma *S*, *T.* [12] *Ins.* etc. *S*, *T.*

Friskeney as before.

Passeley. We say that we are distrained for their homage, and pray judgment whether they ought not to acquit us.

Scrope. The tenements were in the seisin of one Diana, and out of her seisin she gave them to the Abbot, to hold of her in pure and perpetual alms; and the services were done for the souls of Diana and for the souls of her ancestors and of her heirs; and the right of these services cannot pass out of the seisin of Diana and her heirs, unless this be by the tenant's attornment; and the tenant [the Abbot] has never attorned to us and cannot attorn, and the services are always done for the soul of the donor etc., and the [Abbot] cannot attorn himself to another. Therefore he cannot be tenant of any other [than the donor]. Therefore it seems [that we cannot be bound to acquit him].

Toudeby. Diana out of her seisin gave the lands to us and she was seised of [our services]. And then she enfeoffed you of the residue [of her lands] together with these services. So, since you have the estate of our feoffor, and you are bound to the acquittance by your own deed, it seems that we are your tenant.

The other side repeated what they had said. And there was an adjournment to three weeks after Michaelmas. At that day—

Denom. Sir, the tenements concerning which they demand this acquittance are not of A.'s[1] fee or seignory. Judgment, whether this writ lies against us. Moreover, suppose the Abbot is distrained by A.; he brings replevin; A. avows; the Abbot may safely plead 'outside his fee'; for the Abbot never attorned to A. so as to be his tenant. Besides, he can still bring his writ against Diana's heir and demand an acquittance, for he still is [that heir's] tenant.

Herle. They do not deny the deed, which witnesses that they have confirmed Diana's deed [in such wise that the Abbot] shall hold in pure and perpetual alms; and by this deed they are bound to the acquittance. We pray judgment.

Scrope. Your own words prove that the writ does not lie; for you say that we 'confirmed' and have admitted that another 'gave' the tenements; and she [the donor] still is mesne; and since [you] have not attorned to any other, [we pray judgment].

Friskeney on the same side. If I enfeoff [you] to hold of me, and a stranger confirms the gift and obliges himself to an acquittance, you cannot thereby use a writ of mesne against him.

[1] A. is the tenant in the action.

{*Herle*[1] *ut prius.* Jugement.

Fris. Depus qe vous ne poiez dire qe vous estez attorné a nous de voz services, et attornement fet tenance,[2] et cesti bref gist entre seignour et tenaunt, jugement etc.

Et sic pendet.}

{*Scrop.*[3] *ad idem.* Vous dites qe W. vous demande homage et escuage, et de ceo demandez aquitance, et il ne vous poit aquiter s'il ne soit seignour.

Herle. Nous avoms qaunqe appent al aquitance, qe son fait voet qe nous tenoms de lui, et par le feit il ad reservé a lui oraisons et prieres.

Scrop. Le fait ne fait[4] ne prove nient qe nous sumes vostre seignour, qe par mon fait demene jeo ne pusse purchaser autri seignorie. Et vous tenez de Dyan et de ses heirs, et nous voloms averer qe ne tenez de nous ne unqes ne feistes service a nous.

Herle. Vous ne devez avenir al averement encountre vostre fait demene, qe testmoigne qe nous tenoms de vous en pure et en perpetuel almoigne et qe vous nous devez aquiter vers tute gent etc.

Scrop. L'averement qe jeo tienk[5] nest pas contrariaunt au fait, qe jeo tenk[6] d'averer que vous ne tenez pas de nous, ne unqes ne tenistes etc.

Item Scrop. Vostre counte et vostre especialté sount contrariaunt, car vostre bref et vostre counte supposent qe vous estes nostre tenaunt, et l'especialté voet qe Dian dona les tenemenz en pure et en perpetuel almoigne, et nous sumes estraunge a Dyane et a ses heirs ; qe fraunc almoigne est de tel nature q'il ne poit jamès avenir[7] a feffour ne a ses heirs. Jugement, desicom nous sumes estraunge, si nous devoms aquitance fere d'estraunge doun.

Toud. Si jeo purchase terre a tenir de chef seignorage, et vous obligez vous et vos heirs a la garrauntie, et jeo soy empledé, et jeo porte mon bref de garrauntie de chartre, mon bref dirra 'que de eo tenet' et jeo ne tenk point de lui etc.

Denom. Je vous respoigne a cele parole 'de eo clamat tenere,' car cele parole nest pas pledable, par quey vostre r[eson] ne se lie mie.

Ston. Il demandent ceste aquitaunce de nous par r[eson] d'un

[1] In *M*, *P* the case proceeds thus. [2] tenaunt *P*. [3] Text of this continuation from *T*: compared with *S*. [4] *Om.* ne fait *S*. [5] tenk *S*. [6] tenqe *S*. [7] aven' *S*, *T*.

{*Herle* [1] as before. We pray judgment.

Friskeney. Since you cannot say that you were attorned to us for your services, and since it is attornment that makes tenancy, and since this writ lies [only] between lord and tenant, we pray judgment.

So the case pends.}

{*Scrope* [2] on the same side. You say that W. demands from you homage and escuage, and of this you demand acquittance from [us]. But [we] cannot acquit you if [we] are not your lord.

Herle. We have all that is necessary for [a demand of] acquittance: namely, his deed which states that we hold of him; and by the deed he has reserved to himself orisons and prayers.

Scrope. The deed does not make us lord or prove us to be lord, for by my own deed I cannot acquire a lordship that is another's. And you hold of Diana and her heirs, and we will aver that you do not hold of us and never did service to us.

Herle. You cannot get to an averment against your own deed, and it witnesses that we hold of you in pure and perpetual alms, and that you are bound to acquit us against all folk etc.

Scrope. The averment which I tender is not contrariant to the deed, for I tender to aver that you do not hold of us and never did so.

Scrope (resuming). Your count and your specialty are contrariant. Your writ and your count suppose that you are our tenant, and the specialty states that Diana gave the tenements in free and perpetual alms. And we are a stranger to Diana and her heirs, and frank-almoign is of such a nature that it never can come to [3] the feoffor nor to his heirs. And since we are a stranger, we pray judgment whether we need make acquittance of a stranger's gift.

Toudeby. If I purchase land [of you] to hold of the chief lord, and you bind yourself and your heirs to warranty, and I am impleaded, and I bring my writ of *warantia cartae*, my writ shall say *quae tenet de eo*, and yet I do not hold of you.

Denom. My answer is that the phrase *de eo clamat tenere* [in the *warantia cartae*] is not pleadable,[4] so that your argument is not to the point.

S[*crope*].[5] They demand this acquittance of us by reason of a

[1] An alternative for this end of the report is given below.

[2] This is the alternative ending mentioned above.

[3] But should it not be 'come away from'? In other words, the spiritual benefit is not alienable.

[4] Meaning, is not traversable.

[5] Our books say 'Ston' [= Stonore].

escrit qe dit qe nous avoms confermé le doun la dite Dyane en fraunc aumoigne, les quex services sont issi alienez a William et a ses heirs, q'il ne pount jammès vestir en autre persone estraunge par nul manere d'attournement, et il poit desreigner l'aquitaunce vers les heirs Dyane, par la r[eson] qe les services sont regardaunz a eux et a nul autre. Jugement.

Hervy. Le fait voet qe vous grantastes et confermastes le doun com celui q'ad purchasé la seignorie qe fut etc., et a ceo si avez obligé vous et vos heirs al aquitaunce pur estre en lour oreisons, et avez le benefiz de la meson. Et jeo ne voy coment homme poit estre mieux attorné qe par my seisine de service. Par quey etc.

Herle. Nous vous dioms qe A. est seignor du fee et est resceu en lour oraisons et autres benefiz de la meson, et issi seisi de nos services, qe sount espiriteles, pur les quex il par sa chartre obliga lui et ses heirs al aquitaunce. Jugement.

Scrop. Nous ne pledoms pas au fait, mès tut au counte ; qe vous avez conté qe vous tenez de nous, et vous dioms qe vous ne vos predecessors ne tindrent etc., ne nous ne poms estre vostre seignour, qe Dyane dona ceux tenemenz a vous a tenir de lui et de ses heirs en fraunc almoigne ; par quey la seignorie doit estre continué en le saunk Dyan. Par quey impossible est qe nous seoms vostre seignour si vous ne poetz dire qe nous ne purchaceames la seignorie de Dyan ou de ses heirs et qe vous estes attourné, qe de un ten[ement] homme ne poit mie avoir deux seignours immediate.

13B. HARTLAND (ABBOT OF) *v.* BEAUPEL.[1]

L'Abbé de Hurtelande porta son bref de meen vers Robert Beaupel e dit qe atort ne lui aquita des services qe Sire Willem Martin de lui demande : e pur ceo atort qe la ou il tient de lui en franche e pure e perpetuele aumoigne certeinz tenemenz, la demande le dit W. de lui homage e service a sa court de Barstapil de iij. semaines etc. e a ceo faire etc.

Frisq. defendit tort e force etc. e demanda ceo q'il ad de l'aquitance.

[1] Text of this second version from *Y* (f. 199).

writing which says that we have confirmed Diana's gift in free alms, and these services are thus estranged from W. and his heirs,[1] so that they cannot ever vest in a stranger by any manner of attornment; and [the Abbot] can deraign an acquittance against Diana's heirs, for those services concern them and nobody else. Judgment.

Stanton, J. The deed says that you granted and confirmed the gift as one who had purchased the lordship which was etc., and upon this you bound yourself and your heirs to the acquittance in order to be in the [monks'] prayers, and you have the [spiritual] benefits of the house. I do not see how a man can be more completely attorned than by means of seisin of the services.

Herle. We say that [he] is lord of the fee and is received into their prayers and the other benefits of the house, and so he is seised of our services which are spiritual, and in return he by his charter bound himself and his heirs to acquittance. Judgment.

Scrope. We are pleading, not to the deed, but wholly to the count, for you have counted that you hold of us, and we say that neither you nor your predecessors held [of us], and that we cannot be your lord, for Diana gave these tenements to you to hold of her and of her heirs in free alms; and therefore the lordship ought to be continued in the blood of Diana. For it is impossible for you to say that we are your lord, unless you can say that we acquired the seignory from Diana or her heirs, and that you have attorned to us, because for one single tenement a man cannot have two lords immediately.[2]

13b. HARTLAND (ABBOT OF) *v.* BEAUPEL.

The Abbot of Hartland brought his writ of mesne against Robert Beaupel and said that wrongfully he did not acquit him of the services which Sir William Martin demands of him; and wrongfully, for, whereas he holds of him certain tenements in free and pure and perpetual alms, the said William demands of him homage and service to his court at Barnstaple from three weeks [to three weeks] and [distrains him] to do this.

Friskeney defended tort and force and asked what he had [to prove] the duty of acquitting.

[1] In this context we take *alienez a W.* to mean, not 'alienated to W.', but 'made alien to W.' The deed shows that they do not belong to him. Apparently *W.* is the tenant in the action, above called *A.*

[2] For a later solution of the problem see Co. Lit. 98a.

E mette avant un escrist qe dit qe cesti R. granta e conferma totes les terres e les tenemenz qe une Dyane dona a un Abbé de Hurtelande, predecessour etc. e a ses successours, e obligea lui e ses heirs a la garantie e l'aquitance.

Frisq. Cestui Abbé fist le homage e les services de gré a G. de Camville e a sa femme, mere cesti W., qi heir etc., des queux services il prie ore l'aquitance. Jugement, si nous le devom aquiter.

Touth. Est ceo vostre fet ou noun ?

Frisq. granta le fet, e dit qe coment qe le fet dit qe nous duissoms aquiter les tenemenz qe Diane dona etc., Diane si est tut estrange a nous e de rien privé ; par qi [1] fet fet sur tieu doun nous ne puet lier a l'aquitance. E demandoms jugement.

Touth. Nous dioms qe Diane fut dame del manoir enterement e dona ceux tenemenz al abbé e sun covent e a lour successours illuques dieu servanz en pure etc. ; e après la mort Diane entra un C. sun fiz en le manoir en le quel ceux tenemenz sunt, e feffa cestui R. a tenir des chiefes seignurages ; en queu temps il nous fist ceo fet en confermant le doun Diane, e a tenir de lui auxicom nous feimes de Diane.

Scrop. Par que sérvices ?

Touth. Par pater nostres e ave maries.

Bere. Alez a vostre bosoigne. Vous pledez de une part e il pledent d'autrepart, issi qe nul fiert altre.

Scrop. Sire, il bient dereigner ceste aquitance vers nous ; e aquitance gist naturelement entre seignur e tenant ; e seignurie en nostre persone ne pount il attacher, qar il ont conu qe Diane lour feffa, e qe nous purchasames le manoir a quoi etc. del heir Diane ; e sanz ceo q'il ne puissont moustrer q'il sont atturné a nous hors de court ou en court, uncore demoert l'abbé le tenant as heirs Diane. E demandoms jugement si altri tenant devom aquiter, desicom aquitance gist entre seignur e tenant.

Hervi. Quoi r[esponez] vous au fet ?

Scrop. Nous n'avom mie mestier a r[espondre] au fet en cestui bref de aquitance.

Et postea habuerunt diem prece parcium in Octabis S. Michaelis. Ad quem diem *Herle* pria qe lour aquitance etc. ut prius.

Scrop. Vostre counte e vostre especialté sunt contraries, car vostre bref e vostre counte suppose qe vous estes nostre tenant, e l'especialté voet qe Diane dona ceux tenemenz en pure e perpetuele aumoigne, e nous sumes estrange a Diane e ses heirs ; qar franche aumoigne est de tiele nature qe le tenant ne puet jammès atturner de sun feffour

[1] *Corr.* qe (?).

[The Abbot] produced a writing which said that Robert granted and confirmed all the lands and tenements which one Diana gave to a certain Abbot of Hartland, [the demandant's] predecessor, and to his successors, and bound himself and his heirs to warranty and acquittance.

Friskeney. This Abbot voluntarily did the homage and the services to G. de Camville and his wife, the mother of this William, whose heir [William] is. Judgment, whether we ought to acquit him.

Toudeby. Is this your deed or no?

Friskeney conceded the deed and said: Although the deed says that we ought to acquit the tenements which Diana gave, Diana is a total stranger to us and in no wise privy; and by [this] deed made upon such a gift you cannot bind us to the acquittance. Judgment.

Toudeby. We say that Diana was lady of the manor in its entirety and gave these tenements to the Abbot and convent and to their successors serving God there in pure [alms]; and after her death one C. entered into the manor, in which these tenements are, and enfeoffed this Robert [of the manor] to hold of the chief lords, and at that time he [Robert] made us this deed confirming Diana's gift, to hold of him as we did of Diana.

Scrope. By what services?

Toudeby. By paternosters and avemaries.

Bereford, C.J. Get to your business. You plead about one point, they about another, so that neither of you strikes the other.

Scrope. Sir, they hope to deraign this acquittance against us; and acquittance lies naturally between lord and tenant; and they cannot attach a seignory in our person, for they have confessed that Diana enfeoffed them, and that we purchased the manor, to which [these lands belong] from her heir; and unless they can show that they are attorned to us in court or out of court, the Abbot remains tenant of Diana's heirs. We demand judgment whether we ought to acquit another's tenant, as acquittance lies between lord and tenant.

Stanton, J. What is your answer to the deed?

Scrope. We need not answer to the deed in this writ of mesne.

Afterwards they had a day by prayer of the parties on the octave of Michaelmas. Then *Herle* demanded their acquittance as before.

Scrope. Your count and your specialty are contradictory; for your writ and count suppose that you are our tenant, and the specialty says that Diana gave these tenements in pure and perpetual alms, and we are a stranger to Diana and her heirs; for frankalmoin is of such a nature that the tenant can never attorn away from the

ne de ses heirs. Jugement, desicom nous sumes estrange etc., si nous devom aquitance fere de estrange doun. Nul homme ne serra tenu a l'aquitance pur altre s'il ne puet ceux services fere au chief seignur pur lui ; mès ore est issi qe R. est tut estrange a Diane, qe fut tenante W. Martin : ergo etc.

Touth. Si jeo purchase de vous tenemenz a tenir des chiefs seignurs, e vous obligez vous e vos heirs a la garrantie, e jeo sey enpledé, e jeo porte mon bref de garrantie de chartre, mon bref dirra 'quod de eo tenet,' e si ne tienge nent de lui par statut : ergo etc.

W. Denham. Jeo vous r[espond] cele parole 'quam de eo clamat tenere' n'est pas pledable, par quoi vostre r[eson] ne se lie nent.

Hervi. Enparlez e mettez vous la ou vous volez estre.

W. Denham. Il demandent ceste aquitance vers nous par la r[eson] de un escrist qe dit qe nous avom confermé le doun Diane en franche aumoigne, les queux services fut issi annex a Diane e ses heirs q'il ne poent jammès vestir en altri persone estrange par nule manere de atturnement ; e il puet dereigner l'aquitance vers les heirs Diane, par la r[eson] qe les services sunt regardanz eux e nul altre. Jugement etc.

Hervi. Vostre chartre voet qe vous avez granté e confermé le doun Diane com celui que ad purchasé la seignurie qe fut a Diane. Et estre ceo si avez obligé vous e vos heirs a l'aquitance pur estre en lour oreisons e avoir les benefices de la meson ; e jeo ne sey qe homme meltz puet estre atturné qe par mi seisine des services. Par quoi a ceste matir ne say jeo plus dire ; mès dites voz r[esons] e nous les entroms e durrom jour outre.

Herle. Nous dioms qe Robert com chief seignur del fee est resceu en les oreisons e en altres benefices de la meson, e issi seisi de nos services qe sunt espiritels, pur les queux il par sa chartre se ad obligé lui e ses heirs a l'aquitance. Jugement etc.

W. Denham ut supra.

Et dies datus est de iudicio etc.

Ad quem diem venerunt tam predictus Abbas quam Robertus de Beaupel.

Herle. Nous prioms qe vous nous aquitez etc.

Scrop. Aquitance est entre seignur e tenant ; mès nous dioms qe vous ne tenez nent de nous, einz des heirs Diane.

feoffor nor from his heirs. And since we are a stranger, we pray judgment whether we are bound to acquittance on a stranger's gift. No man shall be bound to acquit another unless he can do those services to the chief lord for him; but in this case Robert is a total stranger to Diana, who was the tenant of W. Martin. Therefore etc.

Toudeby. If I purchase from you tenements to hold of the chief lords and you bind yourself and your heirs to warranty, and I be impleaded and bring my writ of warranty of charter, my writ will say 'which he holds of him,' and yet by Statute[1] I do not hold of [you]. Therefore etc.

W. Denom. I answer that the phrase 'which he claims to hold of him' is not pleadable;[2] so your argument does not hold.

STANTON, J. Imparl and [then] take up the position that you wish to maintain.

W. Denom. They demand the acquittance against us by reason of a writing, which says that we have confirmed Diana's gift in frankalmoin; and the services [of that tenure] are so much annexed to the person of Diana and her heirs that they can never vest in the person of a stranger by any kind of attornment; and [the Abbot] can deraign the acquittance against Diana's heirs, because the service [of prayers] concerns them and none other. Judgment etc.

STANTON, J. Your charter says that you have granted and confirmed the gift of Diana as one who has purchased the seignory that was hers. And moreover you have bound yourself and your heirs to the acquittance for the sake of being in their prayers and having the benefits of the house; and I do not see how a man can be better attorned than by seisin of [his] services. So as to this matter I can say no more; but state your reasons and we will enter them [on the roll] and give you an adjournment.

Herle. We tell you that Robert as chief lord of the fee is received into the prayers and other benefits of the house, and so is seised of our services, which are spiritual, and by reason of them he has bound himself by his charter to acquit us. Judgment etc.

W. Denom repeated what he had said.

A day for judgment was given etc.

At that day came the Abbot and Robert de Beaupel.

Herle. We pray that you acquit us etc.

Scrope. Acquittance is between lord and tenant; and we tell you that you hold, not of us, but of Diana's heirs.

[1] *Quia emptores*, Stat. Westm. III.
[2] That is, 'not to be pleaded about,' not traversable.

Herle. Nostre fet suppose iiij. choses. La une qe vous avez granté e confermé le doun Diane etc. L'autre qe vous avez relessé e quiteclamé les services qe nous e noz predecessours soleimes fere a Diane, scil. homage e escuage, eide pur fere fiz chivaler e pur fille marier, e issi en supposant vostre tenant. La terce qe vous avez reservé a vous e a voz heirs oreisons, messes e altres benefices de seinte eglise. La quarte est qe vous e vos heirs sunt tenuz a la gar[rantie] e a l'aquit[ance] le doun Diane etc.

Scrope. Il ne suit nent si jeo grante par mon fet gar[rantir] ou aquit[er] sanz attacher seignurie en ma persone, qe jeo serra tenuz a l'aquitance ou a la garrantie.

Ber. Vous me fetes un fet qe contient garrantie en sei, e, tut ne tienge jeo mie de vous, mon bref de garrantie de chartre dirra ' quam de eo tenet vel tenere clamat.'

Scrop. Ceo est pur la garantie etc.

Inge. Le seignur ne se puet nent si legier sey ouster de sun tenant com le tenant se puet ouster du seignur, pur la penance qe ensuit par le disclamer q'est suffrable pur les avantages le seignur.

Scrop, Justice. Qe vous puet delier de ceo qe vous avez mesme lié ?

Scrop. Vous ne poez nent attacher seignurie en nostre persone, qar vous n'estes nent nostre tenant : prest del averer.

Herle. Al averement du pais encontre vostre fet demene ne devez avenir, qar le fet qe vous avez conu etc. qe suppose privité entre vous et nous com entre seignur et tenant. Jugement etc.

13c. HARTLAND (ABBOT OF) *v.* BEAUPEL.[1]

L'Abbé de Herford porta soun bref de meen vers Robert Beaupel de ceo q'il ne le aquite point des serviz qe William Martyn le demanda ; e dit q'il tynt de ly etc. en pure e perpetuel almoygne.

Denom. La ou vous demandez ceste aquitance vers nous cum vers meen e dites qe vous tenez de nous, les tenemenz ne sount de nostre fee ne de nostre seignurie. Jugement, si ceti bref devers nous y gize.

Herle. Ceo ne poez dire, qe veez ci le fet qe prove qe vous mesme grantastes mesmes les tenemenz en pure e perpetuel almoygne.

[1] This version is found in *P* among the cases of Mich. an. 4.

Herle. Our deed supposes four points. First, that you have granted and confirmed Diana's gift. Secondly, that you have released and quitclaimed the services which we and our predecessors used to do to Diana, to wit, homage and escuage, aid for knighting son and marrying daughter; and thereby you have supposed us to be your tenant. Thirdly, that you have reserved to you and your heirs prayers, masses and other benefits of holy church. Fourthly, that you and your heirs are bound to warrant and acquit Diana's gift.

Scrope. If I by my deed grant that I am bound to warrant or acquit, it does not follow that I am bound to the warranty or acquittance, if no seignory be attached in my person.

Bereford, C.J. You make me a deed which in itself comprises[1] warranty and acquittance; my writ of warranty of charter will say which I hold or claim to hold of him,' albeit I do not hold of you.

Scrope. There it is a question of warranty [not of acquittance].

Ingham.[2] A lord cannot so lightly get rid of his tenant as a tenant can of his lord, because of the penalty for the advantage of the lord which ensues if a tenant disclaims.

Scrope, J. Can you unbind yourself when you yourself have bound yourself?[3]

Scrope. You cannot attach a seignory in our person, for you are not our tenant: ready to aver it.

Herle. To an averment against your own deed you ought not to get, for the deed that you have confessed supposes a privity between you and us as between lord and tenant. Judgment etc.

13c. HARTLAND (ABBOT OF) *v.* BEAUPEL.

The Abbot of [Hartland] brought his writ of mesne against Robert Beaupel, for that he does not acquit him of the services which William Martin demands of him; and he says that he [the Abbot] holds of [Robert] in pure and perpetual alms.

Denom. Whereas you demand this acquittance against us as against a mesne and say that you hold of us, the tenements are not of our fee or of our seignory. Judgment, whether this writ lies against us.

Herle. That you cannot say, for see here the deed which proves that you yourself granted these tenements in pure and perpetual

[1] That is, 'which expressly comprises.' [2] Or perhaps Inge.
[3] But the text of this sentence is dubious.

Jugement, si a nul averement encontre vostre fet devez avenir. (E le fet voloit q'il graunta ' tenementa predicta que fuerunt in dominico suo, les queux un Den dona a un Abbé soun predecessour a ly e a sez successours en pure e perpetuel almoygne, et obliga etc.')

Denom. Par bref et par counte vous afermez qe les tenemenz sount tenuz de nous e qe nous sumes meen, e en prove de ceo la ou vous mettez avaunt un confermement qe testmoigne qe un Deen dona etc. e obliga etc., vers qi vous poez avoir l'aquitaunce, ou ley ne seoffert point qe par reson de confermement vous puisez de vostre verray seygnour departir ne altre seygnur avoir, jugement.

Herle. Est ceo vostre fet ou noun ?

Scrop. Coment qe vous mostrez un confermement, nous ne clamoms rien en la seygnourie, ne par ceo fet nous ne purrioms la vewe [1] de soun verray tenant departir n'estraunger ; e tut veusit il, ley ne seofre ; par qei devers autre qe devers ly ne poez actioun avoir.

Toud. Nous avoms dit qe nous tenoms de vous, e mesqe nous veusisoms [2] dirre qe nous ne tenoms point de vous, ceo ne serroit pas issue de plee, pur ceo qe nous bioums vous lier par vostre fet, par le quel vous nous estes tenu a l'aquitaunce.

Scrop. L'estat qe vous avez si est del doun un Deen, e ne poez mostrer qe pus cel doun qe vous soiez aturné a nous. Jugement.

Toud. Mesqe jeo soi feffé a tenir de chef seygnurage de fee e puis jeo porte moun bref de garauntie de chartre, jeo dirrai par bref e par counte qe jeo tynk de ly. A mult pluis fort qaunt jeo porte moun bref de meen a demaunder l'aquitaunce, depuis qe soun fet demene prove qe jeo tynk de ly e q'il me deit aquiter, il ne deit estre r[ece]u a dire qe jeo ne tynk pas de ly, ne par taunt desafebler l'aquitaunce encountre soun fet demene qe testmoigne le revers.

Denom. Si nous ussoms dest[reint] e nous ussoms avowé sur vous pur serviz arere, si purrez vous estre r[eceu] a desclaimer tenir de nous. E si le Deen destr[einsit], si ne porrez ; par qei etc. E d'autrepart si vous portassez bref de meen vers ly, vous dereygnerez l'aquitaunce vers ly, e par consequent il est vostre seignour e vous soun tenaunt ; e home ne put pas avoir ij. seygnours de un tenement a une foiz.

Stant. Aturnement des serviz fet tenaunt, mès par vostre fet

[1] This can hardly be right. [2] *Corr.* vous veusisez (?).

alms. Judgment, whether you can get to any averment against your own deed. (The deed said that he granted 'the said tenements which were in his demesne, which one [Diana [1]] gave to a predecessor of the Abbot, [to hold] to him and his successors in pure and perpetual alms, and bound [himself to warrant].'

Denom. By writ and count you affirm that the tenements are held of us and that we are mesne, and in proof of that you put forward a confirmation which witnesses that one [Diana] gave etc. and bound etc.; and against her you can have your [writ of] acquittance; and the law will not suffer that by reason of a confirmation you can depart from your true lord or have another lord; so judgment.

Herle. Is it your deed or not?

Scrope. Although you show a confirmation, we claim nothing in the seignory, nor by reason of this deed can we divide or estrange [the true lord [2]] from his very tenant; and even if [we] wished to do that, law would not suffer it; so you cannot have action against any but him.

Toudeby. We have said that we hold of you, and, even if [you] wished to say that we do not, that would be no issue of the plea, for we are endeavouring to bind you by your deed whereby you are bound to acquit us.

Scrope. The estate that you have is by the gift of [Diana], and you cannot show that after that gift you attorned to us. Judgment.

Toudeby. Although I be enfeoffed to hold of the chief lord of the fee and afterwards I bring my writ of warranty of charter [against my feoffor], I shall say 'which I hold of him.' And *a multo fortiori* if I bring my writ of mesne to demand an acquittance, since his own deed proves that I hold of him and that he ought to acquit me, he shall not be received to say that I do not hold of him and thereby escape from the duty of acquitting, against his own deed which witnesses the contrary.

Denom. If we had distrained and avowed upon you for services arrear, you might have been received to disclaim holding of us. And if [Diana's heir] distrained, you could not do so; therefore etc. Moreover, if you brought your writ of mesne against him, you would deraign the acquittance against him. Consequently he is your lord and you are his tenant; and one cannot have two lords for one tenement at one time.

Stanton, J. Attornment of the services makes a tenant; but by

[1] Observe that Diana has become 'a dean.' [2] Conjecture.

vous avez reservé devers vous chosez, scil. orisouns e chaunteries, des queux vous estes seisi. Par qei encontre vostre fet ne devez estre r[ece]u a desclamer. E d'autrepart vostre fet testmoigne qe les tenemenz sount de vostre fee e qe vous ly devez aquiter; par qei encontre vostre fet vous ne poez en la seygnourie desclamer.

West. L'Abbé fut feffé long tens avaunt qe nous riens aveymes en la seygnourie, e il ne put mostrer q'il soit puis a nous atorné, ne qe lez tenemenz passerent hors de nostre seisine ne de la seisine noz auncestres. Jugement, si ceti bref puise il vers nous user.

Frisk. Si H. de West. tint de vous [1] e jeo ly face confermement, vous puise jeo estraunger de la seignurie par moun fet (*quasi diceret non*)? E par consequent vous estes soun tenaunt, vers qi ceti bref y git. Jugement.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 204d, Dev.

Robert Beaupel in mercy for divers defaults.

The same Robert was summoned to answer the Abbot of Hartland (*de Hertilaund*) of a plea that he acquit him of the service which William Martyn exacts from him for (*de*) his free tenement which he holds of Robert in Milleford and Manneslegh, whereof Robert, who is mesne between them, ought to acquit him etc. The Abbot, by David of Servington his attorney, says that, whereas the Abbot holds of Robert two messuages and three carucates of land in the said vills in free, pure, and perpetual alms, William distrains the Abbot for homage, fealty, and suit to be done to William's court at Barnestaple from three weeks to three weeks, for the default of Robert's acquittance: damages, forty pounds. And he produces a certain charter of Robert, which witnesses that Robert granted and by his charter confirmed to this same Abbot and his convent and church of B. Necton of Hertiland all messuages, lands, possessions, and tenements in the said vills which they have by the gift of Dyana, sometime lady of Hole, and her heirs, and of other lords, which [tenements] are of the fee of the same (*ipsius*) Robert of la Hole in the hundred of Hertilaund, to hold to the Abbot and convent and their successors in free, pure, and perpetual alms for ever, reserving nothing to himself and his heirs except the orisons and the spiritual benefits of the abbey; and he bound himself and his heirs to acquit and defend the Abbot and his successors against all folk; the date of which charter is at Thoriton on [26 June 1297] Wednesday next after the feast of St. John Baptist in 25 Edw. [I.].

And Robert comes and defends tort and force when etc.; and upon this, at the prayer of the parties, a day is given to them on three weeks from Michaelmas without essoin. On that day Robert says that he ought not to

[1] *Or* nous *P.*

your deed you have reserved to yourself something, to wit, prayers and chanting, and thereof you are seised. Therefore against your deed you cannot be received to disclaim. Also your deed witnesses that the tenements are 'of your fee' and that you ought to acquit him; so against your deed you cannot disclaim in the seignory.

Westcote. The Abbot was enfeoffed long before we had anything in the seignory, and he cannot show that afterwards he attorned to us, or that the tenements passed out of our seisin or that of our ancestors. Judgment, whether he can use this writ against us.

Friskeney. If H. of West[cote] holds of you, and I make him a confirmation, can I estrange you from the seignory by my deed? Not so. Consequently [the Abbot] is tenant [of Diana's heir], and this writ would lie against him. Judgment.

Note from the Record (*continued*).

answer him [the Abbot] thereof to this writ; for he says that the Abbot does not hold the tenements of him, Robert, nor did they ever pass from the seisin of Robert or his ancestors into the seisin of the Abbot or any of his predecessors, nor did Robert purchase the service of the Abbot for (*de*) the said tenements, in such wise that Robert ought to be mesne in this case; and so he prays judgment whether the Abbot can use this writ against him.

The Abbot says that, since Robert by his deed granted and confirmed the tenements to the Abbot as such as are (*ut illa que sunt*) of Robert's fee, to hold in pure and perpetual alms to the Abbot and his successors and his church etc., Robert retaining for himself and his heirs orisons and spiritual benefits by reason of the grant and confirmation, and also since [Robert] by the said deed granted for himself and his heirs that they would acquit the Abbot and his successors against all folk, he [the Abbot] prays judgment whether Robert can escape from (*diffugere possit quin*) acquitting the Abbot in this behalf by reason of his said deed.

A day to hear judgment is given on the morrow of the Purification [A. R. 4]. Process was continued to the octave of St. John Baptist, when the parties appeared, and a day was given them on the octave of St. Michael [A. R. 5], when the parties appeared, and a day was given them in a month from Easter, when the parties appeared, and a day was given them in three weeks from Michaelmas [A. R. 6]. At that day the Abbot came, by John de Telbrugge his attorney, and offered himself on the fourth day against Robert, and Robert did not come, so the sheriff is commanded to distrain him and to have his body here on the morrow of the Purification. Afterwards, the process having been continued until the octave of St. Martin in A. R. 7, the parties came by their attorneys and Robert was in mercy for divers defaults. A day to hear judgment *in statu quo prius* is given them on the quindene of Hilary. (*Note continued on next page.*)

Note from the Record (*continued*).

In some manuscript Year Books this debate appears again under later years. One of them (*P*) says in the margin that in P. ix. (*i.e.* the Easter Term of A. R. 9) judgment was given for the demandant. Another (*Q*) has a postscript to the same effect. Another (*T.* f. 34d) gives a copy of a record ending thus:—And because Robert confesses the said writing, whereby he granted and confirmed to the Abbot the tenements as those which are of his fee, to hold in pure, free, and perpetual alms to the Abbot, retaining orisons and benefits, and by that writing granted for himself and his heirs that

14A. ROKESLEY *v.* GASCELYN.[1]

Ou fin sanz conisance de droit ne fust mie barre al heir le baroun en le remeindre, ou la femme qe tient en dowere ne se atturna unkes.

A. de Byfelde et Johane sa femme porterent bref de intrusioun vers Elianore qe fut la femme Johan Kirreyn,[2] et demanderent le terce partie de manoir de Astone, en la quele la dite Elianore n'ad entré si noun par abatement q'en ceo fit après la mort Elianore qe fut la femme Bertholemeu qe ceo tynt en dowere del dowement l'avauntdite Bertholemeu jadis son baroun, pere l'avaundite Johane, qi heir ele est.

Toud. Autrefoitz devaunt Sire Johan de Mett[ingham][3] etc. a Westmoustier as utaves de Seint Michael l'an xxiiij. se leva une fine entre Johan Kirion et Elianore sa femme pleintifs et Walter Scordone[4] def[orciaunt], ou Walter conust le manoir de Astone entier estre le dreit Johan Kirion et ceo lui rendi en ceste court a Johan et Elianore, a avoir et tenir a Johan et a Elianore et a les heirs Johan[5] du corps Elianore engendrez, et, si Johan deviast sanz heir de corps Alianore engendré, qe les tenemenz demorrassent al droitz heirs Johan. Issint sumes nous einz par le rendre Walter solonc le purporte de la fin, et la reversioun après la mort Elianore a ceste Johane soer et heir Johan nostre baroun, qe fut partie a ceo rendre. Jugement, si vivaunt nous rien pussez demander.

Herle. Nostre action est[6] sur un tort qe vous feistes qaunt vous abatistes après la mort Elianore qe tynt en dowere de nostre heritage, et a nous barrer vous mettez avaunt un fyn, a la quele un enfaunt

[1] Text of this first version from *M*: compared with *P*. Headnote from *Y*.
[2] de K. *P*. [3] Metyngham *P*. [4] de Scordyng *P*. [5] *Om.* Johan *P*. [6] *Ins.* foundu *P*.

Note from the Record (*continued*).

they would warrant the Abbot and his successors against all folk, it is awarded that Robert cannot in this behalf escape from (*defugere*) the acquittance against his own deed; and therefore it is awarded that Robert acquit the Abbot and his successors of the said service, and that the Abbot recover his damages, which are taxed by the Justices at twenty pounds, and that Robert be in mercy for not acquitting; and the sheriff is commanded to distrain Robert to acquit etc. See also *Old Edition*, pp. 157, 292.

14A. ROKESLEY *v.* GASCELYN.[1]

Qu. whether against a fine the heir of a party can aver continuous seisin if in the fine his ancestor was a purely passive party.

[Richard of Rokesley] and Joan his wife brought a writ of intrusion against Eleanor [No. 2], sometime wife of John [of Criel], and demanded the third part of the manor of [Eastwell], 'into which the said Eleanor has no entry save by the abatement that she made into it after the death of Eleanor [No. 1], who was the wife of [Bertrand], who held the same in dower by the endowment of the said [Bertrand], husband of [the doweress] and father of Joan, whose heir Joan is.'

Toudeby. Heretofore before Sir John of Metingham etc. at Westminster on the octave of Michaelmas in 24 [Edw. I.] a fine was levied between John [of Criel] and Eleanor [No. 2] his wife,[2] plaintiffs, and Walter of [Sturton], deforciant, in which Walter made conusance that the whole manor was the right of John [of Criel], and rendered it in this Court to John and Eleanor [No. 2], to hold to John and Eleanor his wife, and the heirs of John of the body of Eleanor begotten, and, if John died without an heir of the body of Eleanor begotten, the tenements were to remain to the right heirs of John. So [Eleanor, the present tenant], is 'in' by Walter's render, according to the purport of the fine; and the reversion after her death is to this Joan, [the demandant], as sister and heir of John, [the tenant's former] husband, who [*i.e.* John] was a party to this render. Judgment, whether in [the tenant's] lifetime you can demand anything.

Herle. Our action is founded upon a tort which you did when you abated after the death of Eleanor [No. 1], who held in dower of our heritage. To bar us you produce a fine of such a kind that an

[1] Proper names from the record. [2] The tenant in this action.

deinz age[1] put estre partie qe nous ne grantoms mye qe feloun a la ne se prove mye nostre action par les paroles de dreit qe Johan nostre frere deust aver conu. Et nous dioms qe vij. aunz avaunt la date de ceste fin fut Elianore qe tynt en dowere seisi de la terce partie de manoir de Astone, et cel estat continua longement après la date de la fin, et de cest estat morust seisi. Après qi mort Elianore q'ore est tenaunt se abatist en ceux tenemenz auxi com nostre bref suppose. Prest etc.

Fris. Se leva la fin ou noun ?

Ber. Qei qe vous alleggez, il dient qe Elianore fut seisi tut temps et morust seisi, et Walter qe deust avoir rendu n'avoit unqes rien, et ceo tendent de averrer.

Toud. De ceo serroms a voz jugemenz, depus qe J. frere Johane, qi heir ele[2] est, accepta teu rendre en court qe porte recorde, la quele tesmoigne vous estre partie a cele rendre, si,[3] encontre cele accept-[aunce] de vostre auncestre, de averrer qe nous entrames par abatement en voidaunce de la fyn etc.

Herle. La fin qe vous mettez avaunt ne prove mye qe vostre[4] auncestre, par qi ceo rendre dust estre accepté, au temps q'ele se deust lever, fut deinz age. Jugement, si de cel acceptement pussez avauntage prendre.

Toud. Pledez a ceo, et dites q'il fut deinz age.

Herle. Jeo n'ay mestier, qar la fin par la quele vous biez estre eidé ne prove pas q'il fut de plein age. Dont nous demandoms jugement, depus q'en la fyn n'ad il nul parole qe esteint le dreit en la persone nostre auncestre ne qe desprove nostre action, et nous voloms averrer qe Elianore tut temps continua son estat et morust seisi, après qi mort l'avauntdite Elianore sey abatist. Jugement, si par tiel fin de l'averrement devez nous barrer etc.

14B. ROKESLEY *v.* GASCELYN.[5]

William de G. et Johanne sa femme porterent bref d'intrusioun vers E. de G. et A. sa femme, et demaunderent le manoir de B., en le quel mesme ceux E. et A. ne ount entré sy noun par abatement

[1] ne *erased in P.* [2] J. frere J. qi heir il *P.* [3] *Om.* si *P.* [4] nostre (?) *P.*
[5] *Vulg.* p. 79. Text of this version from *B.* A note, apparently contemporary with the text, says, 'Quere totum placitum falsum.' This criticism may be due to the careless transcription of initials, standing for proper names, or the critic may not have distinguished the two Eleanors.

infant under age might be party to it.[1] . . . . And we tell you that seven years before the date of this fine the doweress was seised of a third part of the manor, and this estate she continued long after the date of the fine, and of this estate she died seised. And after her death Eleanor [No. 2], the now tenant, abated into these tenements, as is alleged in our writ. Ready etc.

Friskeney. Was the fine levied? Yes or no?

Bereford, C.J. Whatever you [for the tenant] may allege, they say that Eleanor [No. 1] was always seised, and died seised, and that Walter, who professed to make the render, had nothing; and this they tender to aver.

Toudeby. About that matter we submit to your judgments. Since John, brother of Joan, whose heir she is, accepted this render in a Court which bears record, and it witnesses that you [by your ancestor] are a party to the render, we pray judgment whether, against this acceptance by your ancestor and in avoidance of the fine, [you can be allowed] to aver that we entered by abatement.

Herle. The fine that you produce does not prove that [our] ancestor, by whom the render is supposed to be accepted, was [not] within age at the time when it was levied. Judgment, whether you can take advantage of this acceptance.

Toudeby. Plead to that, then, and say that he was within age.

Herle. I have no need to do so, for the fine by which you hope to be aided does not prove that he was of full age. So we demand judgment, since in the fine there is no word which extinguishes the right in the person of our ancestor or disproves our action. And we will aver that Eleanor [No. 1] always continued her estate and died seised, and that after her death [you] abated. Judgment, whether by such a fine you can bar us from the averment etc.

14b. ROKESLEY *v.* GASCELYN.[2]

[Richard of R.] and Joan his wife brought a writ of intrusion against E. of G. and [E.] his wife and demanded the manor of B., 'into which they have no entry except by the abatement that they

[1] Owing apparently to the omission of some words, both of our manuscripts become unintelligible.

[2] See a note upon the opposite page.

q'en ceo firent après la mort E., qe fuist la femme B. de K., qe cel manoir tient en dowere del douwment mesme cestui P.[1] pere J., qi heir ele est.

Malm. L'an xxvj. devaunt Sire R. etc. se leva une fyne entre J. de B. et E. sa femme pleygnauntz et W. defforciaunt, scil. qe W. conust le manoir de B. ove les appurtinaunces a J. de B. et a E. sa femme et ce luy rendy en ceste court a eux et a lour heirs de lour corps lealment engendrez, et s'ils deviassent etc., qe les tenemenz remenent as dreit heirs J. Et vous dyoms qe J. devia saunz heir. Et issint tenoms les tenementz a terme de la vie E. par vertue de la fyn, et la reversioun a vous.[2] Jugement, sy, vivant E., rien puissez demaunder en ceux tenemenz. Et veietz issi la fyn etc.

Herle. Nous dyoms qe le manoir de B. fuist en la seisine B. de K. nostre auncestre, et avoms fet la descente de B. a B. come au fuitz, de B. a J. come a frere, de J. a J. q'ore demaunde. Et avoms dit qe E. tyent en douwere del douwement B. nostre pere, qi heir etc. Après qi mort vous abatistes etc., quel abatement nous voloms averer. Jugement.

Fr. Conissetz primes la fin.

Herle. Nous n'avoms mestier a conustre ne a dedire, qar E. nostre frere ne conissoit rien par la fin ne graunta, einz soulement resceut. Et au tiel fin un enfaunt deinz age puist estre partie. Et nous voloms averrer l'abatement. Jugement etc.

Toud. La fyn tesmoigne le revers de ceo qe vous dites, la quele fin J. vostre frere, qi heir vous estes, accepta. Jugement, sy encountre la fin a nul averement devetz avenir.

Pass. Sept aunz avaunt ceste fin tient E. le manoir en douwere et vij. aunz après, après qi mort vous abatistes. Prest etc.

Ber. Si H. de S. me eust conu un manoir et rendu en ceste court, le quel manoir fuist a W. de H., ceste fyn ne vaudreit nyent, qe nous averoms un bref de deceite en cest cas, et issint serra la fyne anyenty. Estre ceo, si W. fuist ousté, il averoit l'assise. Par quey il vous diount qe, quele fyn qe vous mettez avant, q'ele ne fuist mye execut.

Toud. Nous ne clamoms sy noun frauctenement, et issint rien a desherit[aunce], et avoms conu le droit a vous. Et einz sumes, et

[1] *Corr.* B. [2] *Or* nous *B.*

made therein after the death of E. [the elder][1] who was the wife of B. of K., who held this manor in dower by the endowment of the said [B.], father of Joan [the demandant], whose heir she is.'

Malberthorpe. In 26 [Edw. I.] before Sir R. etc. a fine was levied between one J. of B. and E. his wife[2] plaintiffs, and one W. deforciant, whereby W. confessed the manor of B. with the appurtenances to J. of B. and E. his wife and rendered it in this court to them and to their heirs of their bodies lawfully begotten, and, if they died etc., with remainder to the right heirs of J. And we tell you that J. died without an heir [by that marriage].[3] And so we hold the tenements for the life of E. by virtue of the fine, and the reversion is to you. Judgment, whether in E.'s lifetime you can demand anything in these tenements. See here the fine etc.

Herle. We tell you that the manor was in the seisin of B. of K. our ancestor, and we have made a descent from B. to B. as son, from B. to J. as brother, from J. to Joan the demandant [as sister]. And we have said that E. [the elder] held in dower by the endowment of B. our father, whose heir we are. And after her death you abated, and this abatement we will aver.

Friskeney. First confess the fine.

Herle. We have no need to confess or to deny it, for [J.] our brother made no conusance or grant thereby, but was merely a recipient. And to such a fine as that an infant under age may be party. And we desire to aver the abatement. Judgment etc.

Toudeby. The fine witnesses the opposite of what you have said. And J. your brother, whose heir you are, accepted it. Judgment, whether you can get to any averment against the fine.

Passeley. For seven years before and for seven years after the fine E. [the elder] held this manor in dower, and after her death you abated. Ready etc.

Bereford, C.J. If H[ervey] of S[tanton] made conusance of a manor to me and rendered it in this court, and it belonged to W[illiam] H[erle], that fine would be good for nothing, for [he] would have a writ of deceit in that case, and so the fine would be annulled. Besides, if W[illiam] were ousted [by me], he would have the assize. So they tell you that whatever fine you produce was not executed.

Toudeby. We claim no more than freehold, and so claim nothing to your disherison, and we have confessed that the 'right' is yours.

[1] We call her the elder to distinguish her from the female tenant in the action.

[2] The female tenant, who has now taken a second husband.

[3] The female demandant is his heir.

avoms la fyn en poinge.[1] Jugement, sy, vivant nous, ren puissetz demaunder.

Herle. Par cele fyn rien ne descret a J., qar il ne conissoit ren, ne rien ne graunta par la fyn, et l'acceptement ne puist en luy afferm[er], pur ceo q'il ne fit rien, forsqe resceut ; a quey un enfaunt deinz age pust estre partie, qe en tiel cas la court n'avera regard al age. Par quey par cele fyn ne puist la court estre ascerté le quel yl soit deinz age ou noun.

West. Sy ele fuist empledé de ceux tenemenz par un estraunge, et ele vensit en court et deit qe la revercioun fuist a vous par la fyn, et dit q'ele n'ad qe fraunctenement, ele avereit eide de vous. Par quey yl semble qe vous ne poietz qaunt a ore ren demaunder.

Pass. Sy nous fuissoms jointe ove vous en eyde, ceo serroit un ; mès ore nous garderoms bien del ayde.

Ber. Yl dient qe, coment qe la fyn se leva par paroule de rendre, E., qe fuist la femme B. de K. l'eigné, tient cel manoir en douwere avaunt la fyn, et la fyn unqes exec[ute]. Par quey il tenent la fyne de nule value. Le quel r[espouns] serroit de anyentir la fyne. Par quey il covent sour ceo aviser.

Pass. Nous pernoms nostre title de B. de K. l'eigné, et avoms fait la descente a nous, issint qe l'auncien droit nous demourt. Le quel est contenu[2] lenialment tauntqe a nous. Jugement, depuis qe vous ne poietz le droit moustrer etteint en nully persone parmy qi nous avoms fet nostre descente, et tendoms d'averrer qe E. tyent en douwere del douwement B. son baroun, après qi mort vous abatistes etc., le quel averrement vous refusetz. Jugement etc.

Ber. Avant le statut *de finibus* homme pout voider un fyn auxint bien come une chartre. Mès ore veot le statut qe fines a droit leveez ne soient mye anyentiz par les parties ne par lour heirs. Et il dient qe ceste fyn ne se leva mye a droit, pur ceo qe C. tient le manoir en douwere vij. aunz avaunt et vij. aunz après. Par quey attendetz vos jours etc. Jugement etc.

14c. ROKESLEY *v.* GASCELYN.[3]

Richard de Rokeley e Alice sa femme porterent un bref de intrusion vers Edmund Casselin e Alianore sa femme e disoint q'il n'avoient entré si noun par abatement q'il firent après la mort Alianore, qe fu

[1] empoign' *B.* [2] *Corr.* continué. [3] This third version from *Y* (f. 93d).

Also we are 'in' and have the fine in our hands. Judgment, whether you can demand anything in our lifetime.

Herle. By that fine nothing passed from[1] J., for by it he made no conusance and no grant, and [you] cannot affirm an acceptance by him, for he did nothing, but merely received; and to that much an infant may be party, for in such a case the Court will pay no regard to age. So by this fine the Court cannot be assured as to whether he was under age or not.

Westcote. If [the female tenant] were impleaded by a stranger for these tenements, and she came into court and said that by the fine the reversion was in you, and that she had only freehold, she would have aid of you. Therefore it seems that for the present you can demand nothing.

Passeley. If we had joined in aid with you, that would be one case; but here we are careful not to aid you.

Bereford, C.J. They say that, although the fine was levied with the word 'render' in it, E. [the elder], wife of B. of K. the elder, held this manor before the fine and that the fine was never executed. So they hold the fine to be valueless. Such an answer goes to annul the fine. So we must be advised of this.

Passeley. We take our title from B. of K. the elder, and we have made a descent to us, so that the ancient right dwells with us, continuing lineally down to us. And since you cannot show that the right was extinguished in any person through whom we have made our descent, and since we tender to aver that E. [the elder] held in dower by the endowment of B. her husband, and that on her death you abated, and since you refuse this averment, we pray judgment etc.

Bereford, C.J. Before the Statute of Fines a man might avoid a fine just like a charter. But now the Statute says that fines duly levied[2] are not to be annulled by the parties or their heirs. And they say that this fine was not duly levied, for that [E. the elder] held the manor in dower seven years before and seven years afterwards. Therefore keep your days [to hear] judgment etc.

14c. ROKESLEY *v.* GASCELYN.

Richard of [Rokesley] and [Joan] his wife brought a writ of intrusion against Edmund [Gascelyn] and Eleanor [No. 2] his wife and said that they had no entry save by the abatement which

[1] Literally, 'nothing decreased from.' [2] Stat. 27 Edw. I.: 'fines rite levate.'

femme Bertram de C., qe ceux tenemenz tient en dowere del heritage ceste Alice.

Frisq. defendit etc. e dist qe un Wautier de Sturtone granta par fin levé le manoir de N., qe Alianore qe fu femme B. tient en dowere, a un Joan de C. e a ceste Alianore e a les heirs Joan, dount ceste Alice est soer e heir Joan, e demandoms jugement desicom Alianore ne cleim en les tenemenz qe terme de vie par vertu de cele fin (e mist avant fin) dont la reversion est a la dite Alice, si vivant Alianore accion puissont avoir.

Herle. E nous jugement, desicom la fin ne suppose qe Johan nul droit conust a W. Sturtone pur le grant aver, mès qe la fin se leva sur un grant e rendre, a quele fin un enfant de iij. aunz poet estre partie, si de nostre accion per tele fin devoms estre barrez.

Touth. Nous sumes seisi del manoir, e celui W. granta e rendy a Johan e a ceste Alianore adonque sa femme par cele fin. E demandoms jugement etc.

Herle. E nous jugement desicom vostre trespas si est cause de nostre accion, e la fin ne desprove mie l'abatement, si nous ne devoms estre r[espondus].

Westcote. Si Edmund e Elianore fuissont enpledez par un estrange de ceu manoir e eux prieront aide de Richard e A. sa femme, as queux la reversion apent, eux jointement reboterent [1] privez e estranges par la fin qe suppose rendre.

Bereforde. Vous dites mal, qar chescone fin qe suppose rendre n'est pas barre. Jeo pose qe jeo leve une fin a Sire Hervi mon compaignon des terres Sire Henri le Scrope, tiele fin est de nule force ne a nului barre, car par bref de desceite puet ele estre defete, pur ceo q'ele ne est pas execut.

Pass. Sire devant la fin e en la fin e vij. anz après la fin Alianore qe fu femme B. touz jours fu seisi sanz attornement faire ou remuement de sun estat, issi qe la fin ne fu nent execut : prest etc.

Fris. Nous vous dioms qe Joan baroun etc. porta sun bref de covenant vers W. de Stratton, le quel W. par vertu de ceo bref granta e rendi le dit maner a Joan e Alianore par cele fin, e le dit Johan accepta cel grant par fin. · Demandoms jugement si ore Alice heir Johan puisse disaccepter.

Bereforde. Volez autre chose dire de une partie e d'altre ?

[1] *Corr.* rebotereient.

they made after the death of Eleanor [No. 1], wife that was of Bertram de C., who held these tenements in dower of the inheritance of this [Joan].

Friskeney defended etc. and said that by fine levied one Walter de Sturton granted the manor of N., which Eleanor [No. 1] wife of B. held in dower, to one John of C. and this Eleanor [No. 2] and the heirs of John; and that [Joan] is sister and heir of John; and since Eleanor [No. 2] claims nothing in the tenements but for term of life by virtue of this fine (which he produced), and the reversion is in [Joan], we pray judgment whether in Eleanor's lifetime they can have an action.

Herle. We also pray judgment whether we ought to be barred from our action by such a fine, since the fine supposes that John made no conusance of any right to W. Sturton in order to obtain the grant, but the fine was levied [merely] upon grant and render, and to such a fine a child of three years might be party.

Toudeby. We are seised of the manor, and Walter granted and rendered to John and to Eleanor [No. 2], then his wife, by this fine. We pray judgment.

Herle. And we pray judgment whether we ought not to be answered, since your trespass is the cause of our action, and the fine does not disprove the abatement.

Westcote. If Edmund and Eleanor [No. 2] were impleaded for this manor by a stranger and they prayed aid of Richard and [Joan] his wife as reversioners, they jointly could rebut privies and strangers by the fine, which supposes a render.

Bereford, C.J. No, you are wrong, for not every fine that supposes a render is a bar. Put case, I levy a fine to Sir Hervey, my colleague, of the lands of Sir Henry le Scrope; such a fine is of no force and is a bar to no one, for by a writ of deceit it can be undone, since it is not executed.

Passeley. Sir, before and at and seven years after the levying of the fine, Eleanor [No. 1], who was wife of B., was always seised without attornment or change of her estate, so that the fine was not executed: ready etc.

Friskeney. We say that John, husband [of Eleanor No. 2], brought his writ of covenant against Walter of [Sturton], and Walter by virtue of that writ granted and rendered the manor to John and Eleanor [No. 2] by this fine, and John accepted the grant by fine. We pray judgment whether [Joan], John's heir, can now 'disaccept' it.

Bereford, C.J. Have you anything else to say on either side?

Herle. Nous vous dioms qe Alice qe porte cestui bref n'est pas heir Wautier de Strattone, par quoi sa conissance ne sun rendre nous ne deit grever, ne Joan nostre frere e auncestre etc. rien n'ad conu a ceste fin ; e cele fin se poet lever a un afant de iij. anz, e Alianore feme nostre pere[1] fu seisi de ceo maner en dowere del dowement avantdit devant la fin e vij. anz après la fin. E demandoms jugement desicom il ne dedient mie l'abatement ; e prioms seisine de la terre etc.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 51, Kent.

Richard de Rokesle and Joan his wife, by their attorney, demand against Edmund Gascelyn and Alianora [No. 2] his wife the manor of Estwelle as the right and inheritance of Joan, and as that into which Alianora [No. 2] has no entry except by the intrusion which she made into it after the death of Alianora [No. 1], wife that was of Bertrand de Criel the elder, who held it in dower of the gift of Bertrand, sometime her husband, father of Joan, whose heir she [Joan] is. The demandants say that Bertrand, the father, was seised of the manor in his demesne as of fee and of right, in time of peace, in the time of King Edward, father of the present King, taking esplees to the value etc. ; and from him the right descended to one John as son and heir ; and from him, since he died without an heir of his body (*de se*), the right descended to one Bertrand as brother and heir, and from him, since he died without [an heir of his body], the right descended to this Joan, the demandant, as sister and heir, and into which [the tenants had no entry, except] by the intrusion etc.

Edmund and Alianora [No. 2], by their attorney, after formal defence, say that Richard and Joan can at present claim nothing in the manor ; for they say that heretofore, to wit, in the court of King Edward [I.], before J. de Metingham and his fellows, justices of the said King, here on the quindene of Easter in A. R. 25 [A.D. 1297], a fine was levied between one John de Criel, sometime husband of Alianora [No. 2], and the said Alianora, plaintiffs, and one Walter de Sturton, deforciant, of the said manor, whereof a plea of covenant [was pending between them] ; and by this fine Walter confessed the manor to be the right of John, and rendered it [to him in this court], to have and to hold to John and Alianora [No. 2] and the heirs which John should beget upon the body of Alianora, of the chief lords of that fee, and, if it should happen that John should die without an heir begotten of the body of Alianora, then after his death the manor should entirely remain to the right heirs of John, to hold of the chief lords of that fee for ever by the services pertaining to the manor ; and they say that Alianora [No. 2] together with Edmund, now her husband, is by virtue of the fine seised

[1] *Ins.* qe *Y.*

Herle. We tell you that [Joan] who brings this writ is not the heir of Walter of [Sturton], so his conusance or his render ought not to hurt us; and John our brother and ancestor made no conusance in this fine; and such a fine as this might be levied to an infant of three years; and Eleanor [No. 1], our father's wife, was seised of the manor in dower on the endowment aforesaid before and at and seven years after the fine. We pray judgment, since they do not deny the abatement; and we pray seisin of the land.

Note from the Record (*continued*).

of the manor; and they pray judgment whether Richard and Joan can demand the manor in the lifetime of Alianora (*ipsa Alianora superstite*).

Richard and Joan say that the fine ought not to prejudice them; for they say that Alianora [No. 1], who was the wife of Bertrand, was seised of the manor by way of dower before the levying of the fine and at the time of the levying and for seven years afterwards, and died seised thereof; and they say also that John, sometime husband of Alianora [No. 2], now wife of Edmund, died long before Alianora [No. 1], wife that was of Bertrand, so that after the death of Alianora [No. 1], wife that was of Bertrand, Alianora [No. 2], wife that was of John, being sole, intruded herself into the manor; and this they are ready to aver; wherefore—since by the conusance or render of Walter, who had nothing in the manor at the time of the levying of the fine, but was a total stranger to Joan, and by this conusance no new right in this case accrued or could accrue to John, brother of Joan, whence it follows that John had no other estate by the fine than he had before, and by the fine John made not any conusance whereby his heir ought to be precluded from action—they pray judgment.

Edmund and Alianora [No. 2] say that—whereas Richard and Joan demand the manor through (*per medium*) John, and John was a party to the fine, and by the tenor thereof it sufficiently appears that John accepted (*acceptavit*) the conusance and render of the manor made to him in the King's Court, supposing that Walter was at that time seised of the manor, so that if John were alive he could not deny that Walter was seised thereof, nor ought Joan, claiming right through (*per medium*) John, to be of better condition than John her ancestor to annul the fine by denying the seisin of Walter at the time when it was levied—they pray judgment whether Richard and Joan can get (*attingere*) to any averment by the country to evacuate the fine contrary to its testimony (*ad predictum finem evacuandum contra testimonium eiusdem*).

A day is given them to hear their judgment here on the morrow of the Souls.

Afterwards, on the octave of St. John Baptist in A. R. 6 [A.D. 1313], the record of the said suit is sent before the justices making eyre in the said county by John Pynket, the attorney of Richard and Joan. In the old edition (p. 274) there seems to be judgment for the tenant in A. R. 8.

15. MORTIMER *v.* LUDLOW.[1]

Entré sur la novele diseisine ou le tenant allegea noun tenure.

Un bref d'entré fondu sur la novele diseisine fut porté vers un Johan de M.

Denom r[espoundit] et dit q'il ne poit respoundre, qe il dit qe une femme si porta son bref de dowere vers lui de eisné date et demanda la tierce partie de mesmes les tenemenz etc. et recoveri par jugement qe se fit sur defaute. Et demanda jugement de bref.

Ber. Si le bref de dower fut plus tardif purchacé qe n'est cesti bref, le jugement qe se fit ne serreit mye de taunt de force q'il ne respondreit del entierté de la demande. (Et pur ceo qe le bref de dowere fut de plus tardif purchace, si fut agardé qe le tenant respondesit de ceo q'il tent.)

Et il dit qe son piere ne fut pas seisi. Prest etc.

A les utaves de Seint Michael se joynsit une enquest entre Dame Margery de Mortimer et W. de Ludlowe qe W. ne fut pas seisi de les deux parties de manoir de Markeley pur ceo qe Agnes sa miere fut seisi de la tierce partie qe ceo recoverist en court etc. par jugement. Et avoint jour jeqes as utaves de Seint Hillaire. A quel jour l'enqueste ne vint. Par qei agardé fut etc. Et avoint jour as utaves de la Trinité. A quel jour l'enqueste vint.

Herle. N'entendoms mye qe vous voillez a cele enqueste aler qar vous troverez par recorde de court qe Agnes porta son bref vers W. et taunt suyt q'ele recovera la tierce partie de ij. parties par jugement. Par vertue de quel jugement ele est huy ceo jour seisi, et fut le jour de plè. Dont de aler ore a ceste enqueste serroit d'enquere par pays ou la court put estre ascerté par recorde et a ouster Agnes del fraunctenement q'ele recovera par jugement, qe serreit encontre ley. Jugement etc.

Malb. Nous deffendimes[2] sur certein point en pays, et la mise joynte et[3] entre nous et enroulé, q'est un jugement, le quele esta en sa force nent defet. Par qe il semble qe vous devez a cel enqueste aler etc.

[1] Text from *M*: compared with *P*. Headnote from *P*. [2] descendimes *P*.
[3] *Om.* et *P*.

15. MORTIMER *v.* LUDLOW.

Another version of *Mortimer* v. *Ludlow*, reported in vol. i. page 43.

A writ of entry founded on the novel disseisin was brought against one John of M.[1]

Denom answered and said that he could not answer, for (said he) a woman brought her writ of dower against us of earlier date, and demanded the third part of these same tenements etc., and recovered by a judgment made upon a default. Judgment of the writ.

Bereford, C.J. If the writ of dower was purchased after this writ, the judgment made thereon would not be of such force as to excuse him from answering for the whole of the demand.)And because the writ of dower was purchased later [than this writ], it was awarded that the tenant should answer for what he holds.)

[*Denom*]. [The demandant's] father was never seised. Ready etc.

On the octave of Michaelmas an inquest was joined between Lady Margery de Mortimer and W. of Ludlow on the point that [on the day of plea pleaded][2] William was not seised of the two parts of the manor of Marcle, for that Agnes his mother was seised of the third part [of the two parts], having recovered it in Court by judgment. And they had a day on the octave of Hilary. At that day the inquest came not. So it was awarded etc., and they had a day on the octave of Trinity. On that day the inquest came.

Herle. We do not think that you will proceed to this inquest; for you will find by record of the Court that Agnes brought her writ against William, and sued so far that she recovered the third part of two parts by judgment; and by virtue of that judgment she is this day seised, and was so on the day of the plea. So to proceed now to this inquest would be to inquire by the country where the Court may be certified by record, and would be to oust Agnes from her freehold that she recovered by judgment; and that would be against law. Judgment etc.

Malberthorpe. About a certain point we [descended] to the country, and the mise was joined between us and enrolled; and that is a judgment, and it stands in full force and has not been undone. Therefore it seems that you ought to proceed to this inquest etc.

[1] The true name, William of Ludlow, comes out below. The reporter incorrectly simplifies a long discussion. The action was a *cui in vita* in the *post.* See the record in vol. i. p. 43.

[2] These words seem to be needed.

Herle. Si l'enqueste se joynt de nul poynt, et la court put estre asserté par recorde, cele mise est enroullé, et la court put tout temps errour [1] en le procès redrescer si la qe le jugement sur le principal soit rendu. Mès sur le principal nul jugement se fit unqore.

Par qei non obstantibus predictis, l'enqueste fut agardé et pris. Qe dit qe le jour de plè, scil. as utaves de Seint Michael, W. de Londres [2] fut seisi de les ij. parties del manoir de Markleye [3] sanz ceo qe Agnes de L. rien n'avoit.

Herle. Volez demander del enqueste si Agnes fut pus seisi par execution qe se fit sur le jugement en bref de dowere ?

Spigurnel.[4] Ja Dieu ne voille del hure qe les ij. parties desscenderent en certein poynt en pays, le quel poynt est trové, qe sur nul autre chose deussoms enquere.

Pass. ad idem. Nous ne sumes pas en play de diseisine. Par qei etc.

Ber. Une chose nous meot qe [5] nous ne enquerroms plus del enqueste, qar jeo pose qe Agnes recoveri par jugement vers William,[6] par vertue de cel jugement ele eust osté William sanz execution de ministre le Roy. Ne recovereit W. vers Agnes per assise de novel diseisine ? Certes, si freit. Dont est celui tenaunt qe pout le fraunctenement recoverir s'il soit ousté de nuly, vers qi Margery ad conceu son bref. Par qei etc. Estre ceo, grant duresce ensywereit si nous eussoms abatu le bref sur recorde trové en le roudle sanz enqueste prendre, qe si Dame Margery eust porté son bref vers Agnes, et ele desclama en la tenance etc., et si ele portast autrefoitz bref vers William et Agnes sa miere, Agnes ne suffrait jammès execution. Et issint serreit Dame [7] Margery a tut la vie Agnes sanz recoverer. Par qei del hure qe W. devaunt ces hures ad mesme conu q'il fut tenaunt le jour de bref purchacé del entier de ij. parties de manoir avauntdite, et trové est par verdit de enqueste qe as utaves de Seint Michael qaunt les parties plederent qe W. fut seisi, et issint le revers de ceo qe W. tendi d'averrer trové, par qei agarde ceste court qe Margery recovere sa demande enterement et William en la mercy etc.

[1] entur *M*; errour *P.* [2] L. (*the rest of the name erased*) *P.* [3] de M. *P.* [4] Scrop. *P.* [5] *Sic P*; chose nomement ne *M.* [6] *Ins.* et qe *P.* [7] damag' *M*; dame *P.*

Herle. If an inquest is joined about any point of which the Court can be certified by record, although the mise be enrolled, the Court can always rectify an error in the procedure, until a judgment has been rendered upon the main point; but here judgment on the main point has not yet been rendered.

Notwithstanding these objections, the inquest was awarded and taken. It said that on the day of plea pleaded—to wit, the octave of Michaelmas—William of [Ludlow] was seised of the two parts of the manor of Marcle, and that Agnes had nothing.

Herle. Be pleased to ask the inquest whether Agnes was seised afterwards by execution on the judgment in the writ of dower.

Spigurnel, J.[1] Now God forbid that we should make further inquiry when the two parties have descended to the country about a certain point, and that point has been found!

Passeley. We are not in a plea of disseisin. Therefore etc.

Bereford, C.J. There is one matter which moves us to make no further inquiry. I put case that Agnes recovered by judgment against William, and then by virtue of this judgment she ousted William without execution by the King's officer. Would not he recover against her by assize of novel disseisin? Certainly he would. Very well, then, he is tenant who can recover the freehold if anybody ousts him. [That is William's case, and] against him Margery has conceived her writ. Wherefore etc. Moreover, great hardship would have followed had we abated the writ by the record found on the roll without taking an inquest; for, if Dame Margery had brought her writ against Agnes, [Agnes] might have disclaimed the tenancy, and then if [Margery] brought her writ against William and his mother Agnes, Agnes would never suffer execution,[2] and so Dame Margery would be without recovery during the whole of Agnes's lifetime. And since William has before now admitted that he was tenant of the whole of these two parts on the day of writ purchased, and now it is found by verdict of inquest that he was seised on the octave of Michaelmas, when the parties pleaded, and that is the reverse of what he tendered to aver, therefore this Court awards that Margery recover her entire demand and that William be in mercy etc.

[1] Or Scrope. [2] The correctness of the text at this point may be doubted.

16. ANON.[1]

D'entré, ou bref de dowere fust porté vers le tenaunt pendaunt çoe bref d'entré : issint nient tenaunt de sa demaunde. Et breve cassatur ; le demaundaunt ne fust pas amercié etc.

Un homme porta soun bref d'entré.

Malm. Le tenant ne puist sa demande rendre, pur ceo qe un F. tient la tierce partie des tenemenz. Jugement du bref.

Scrop. Pleynement tenaunt jour du bref purchasé. Prest etc.

Staunton. Il vous covent dire q'ele tient la tierce partie de sa demande etc. et tient jour du bref purchasé. Autrement n'est mye vostre response pleyne.

Malm. Sire, F. porta bref de douwere vers nous et rec[overa] douwere de mesmes les tenemenz par jugement de ceste court ; et ceo après le bref purchasé.

Scrop. Yl ad conu q'il fuist tenaunt dil entier jour etc. Jugement.

Staunton. Vous ne poietz en ceo cas vostre bref meyntenir. Mès pour ceo qe la defaute n'est mye en vous, vous ne serrez mye amercié.

Et breve cassatur

17. CATESBY (PRIORESS OF) *v.* BLASTON.[2]

Wast.

Le Priour de Catesby[3] porta son bref de waste vers Thomas de Blastone[4] et dit q'il avoit fet waste, nomement en un chambre, pris de xl. s., abatu et enporté, un thorail,[5] pris de xx. s., de cheins[6] et sic de aliis.

Malb. La ou il suppose par son bref qe le lees fut fet a nous taunt soulement, nous vous dioms qe le lees fut fet[7] a G. nostre piere et a M. sa femme nostre miere et a nous a terme de noz iij. vies, et il n'ad fet nul mencion de eux. Jugement.

Scrop. Vous tenez les tenemenz a terme de vostre vie du lees

[1] *Vulg.* p. 79. Text from *B.* [2] Text from *M*: compared with *P.* [3] La Prioresse de E. *P.* [4] vers Rich. le fiz Thomas de Glaston' *P.* [5] thorayle *P.* [6] des keynes *P and om. the price.* [7] qe le fet se fit *P.*

16. ANON.[1]

If pending a writ of entry judgment in a writ of dower is recovered against the tenant, the writ of entry can be abated, but the demandant will not be amerced.

A man brought his writ of entry.

Malberthorpe. The tenant cannot render his demand, for one F. holds the third part of the tenements. Judgment of the writ.

Scrope. Fully tenant on the day of writ purchased. Ready etc.

Stanton, J. You must say that she holds the third part of his demand etc. and held it on the day of writ purchased. Otherwise your answer is not complete.

Malberthorpe. Sir, F. brought a writ of dower against us, and recovered dower of these tenements by the judgment of this court: and this after writ purchased.

Scrope. He has confessed that he was tenant of the whole on the day [of writ purchased]. Judgment.

Stanton, J. In this case you cannot maintain your writ. But since this is not due to your fault, you shall not be amerced.

Writ quashed.

17. CATESBY (PRIORESS OF) *v.* BLASTON.[2]

An action for waste can be brought against one of several joint lessees.

The Prioress of Catesby brought her writ of waste against Thomas of Blaston and said that he had done waste, to wit in having pulled down and carried away a chamber, price forty shillings, a kiln, price twenty shillings, [so many] oaks, price etc.

Malberthorpe. Whereas she supposes by her writ that the lease was made to us alone, we tell you that the lease was made to G. our father and his wife M. our mother and to us for the term of our three lives, and of them she has made no mention. Judgment.

Scrope. You hold the tenements for the term of your life by the

[1] This case, found only in one book, looks not unlike an exercise suggested by the immediately preceding case of *Mortimer* v. *Ludlow*. But see above, pp. 109–10.

[2] This case is Fitz. *Wast*, 5. Proper names from the record.

nostre predecessor, et R. et M. sount mortz. Jugement, si nostre bref ne soit assetz bon.

Staunt. Qaunt a ceo le bref est assez bon.

Malb. Unqore a cest etc.[1] ne devez etc. qar le predecessor ceste Prioresse graunta[2] par son fet qe si wast ou destruction fut fet en ceux tenemenz, qe serroit redresscé par ordinaunce de veisinage[3] sanz plè. Jugement.

Staunt. Naturel issue en ceste plè est a r[ecoverer] franctenement, qe ne put estre par ordinaunce de nully sanz bref le Roy. Par qei dites outre.

Malb. Les tenemenz furent lessez a nostre piere et a nostre miere et a nous taunt com nous fumes[4] deinz age. Par qei qaunt a nostre temps nul wast fet. Prest etc.

Scrop. Nous voloms averrer nostre bref qe les tenemenz furent lessez[5] a vous a terme de vostre vie[6] et qe vous aviez fet waste.

Malb. ut prius.

Scrop.[7] Conissez donqe le waste en temps R. et M. et demorrez par la en jugement, ou traversez ceo q'il vous surmeit.

Malb. Nous ne avoms nul waste fet: prest etc. Et prioms qe mencion seit fet coment le lees se fit et qe en nostre temps nul waste fet: prest etc. Et q'en temps de[8] lees fumes dedeinz age etc.[9]

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 94, Buck.

Robert son of Thomas de Blaston in mercy for divers defaults.

The same Robert was summoned to answer the Prioress of Catesby of a plea why (whereas by the common counsel of the King's realm it is provided that it is not lawful for any to make waste, sale, or destruction of the lands, houses, woods and gardens demised to them for term of life or of years), the same Robert made waste, sale, and destruction of the houses, woods and gardens in Westbury, which Amabilla, sometime Prioress of Catesby, predecessor of [the plaintiff], demised to Robert for his life, to the disherison of the said Prioress's church of B. Mary, and against the form of the said provision. The Prioress, by Robert de Greneford her attorney, complains that, whereas Amabilla sometime Prioress and the convent of the place had demised to Robert and to Thomas de Blaston and Margaret his wife the manor of Westbury of the Prioress and convent to hold as long as they lived, Robert did waste in that manor by pulling down a chamber,

[1] *Om.* etc. *M.* [2] *Om.* graunta *M*; *ins. P.* [3] vesnage *P.* [4] fuisoms *P.* [5] *Om.* lessez *M*; *ins. P.* [6] *Om.* vie *P.* [7] *Om.* Scrop. *M*, *P.* [8] du *P.* [9] *Ins.* et alii econtra *P.*

lease of our predecessor, and [your father and mother] are dead. Judgment, whether our writ be not good enough.

STAUNTON, J. As to that matter the writ is good enough.

Malberthorpe. Once more you ought not [to be answered], for the predecessor of this Prioress by her deed granted that if waste or destruction were made in these tenements, it should be redressed by an award of the neighbourhood without plea. Judgment.

STAUNTON, J. The natural issue of this action is a recovery of the freehold, and that there cannot be by the award of any without the King's writ. So plead over.

Malberthorpe. The tenements were leased to our father and our mother and us while we were under age. Therefore we plead that no waste was done in our time. Ready etc.

Scrope. We desire to aver our writ that the tenements were leased to you for your life and that you committed waste.

Malberthorpe repeated what he had said.

[*Scrope.*][1] Then confess that waste was done in the time of [your father and mother], and demur there in judgment. Or else traverse what he surmises against you.

Malberthorpe. We have done no waste. Ready etc. And we pray you that mention be made [on the record] of how the lease was made and that in our time no waste was made, and that we were under age at the time of the lease.

Note from the Record (*continued*).

price forty shillings, an ox-shed, price a hundred shillings, a sheep-fold, price a hundred shillings, a bake-house, price twenty shillings, a kiln, price twenty shillings, a barn, price twenty shillings, and by felling in the foreign (*forinseco*) wood of the manor four score oaks, price three shillings apiece, and in the park within close two thousand oaks, price twelve pence apiece, and around the court of the manor sixty oaks, price twelve pence apiece, and by felling in the garden twelve apple-trees, price eighteen pence apiece, and twelve ashes, price two shillings and four pence apiece, to the disherison of the said church, and against the form of the said provision: damages, two hundred pounds.

Robert, after formal defence, says that he did not make any waste or destruction in the manor as the Prioress complains; and of this he puts himself upon the country.

Issue is joined, and the sheriff is commanded to take an inquest on the manor. The return day is the morrow of St. Martin.

[1] The name is a conjecture. The speech may well come from a justice.

18. HORLBING *v.* AUNSEL.[1]

Precipe quod reddat, ou fyn fut allegé: ou dit fut qe les tenemenz compris deinz la fyn ne sount pas les tenemenz en demande. Et furent a le averement en cete forme.

Un homme porta un bref etc., et fut le bref 'Precipe etc. septem [2] mesuagia et dimidium.'

Malb. Jugement de bref, qar forme de la chauncellerie est 'medietatem unius mesuagii,' et non pas 'dimidium.'

Scrop. Vous aviez [3] vewe, et par taunt avez affermé le bref bon.

Malb. Bref q'est hors de forme [4] a nul temps put estre bon.

Staunt. Respondez outre. Vous affermez [5] le bref bon.

Fris. L'an du Roy E. piere le Roy etc. devaunt Sir Johan de Mett[ingham] etc. se leva une fin entre A. et C. pleinaunts [6] et W. de W. et E. sa femme deforciauntz de ceux tenemenz ensemblement ove autres tenemenz, scil. qe W. et E. sa feme conisterent etc. estre le dreit A. etc. et E. et ses heirs garr[antireient]. Et vous estes heir mesme cesti. Dont si nous fussoms empledé etc., jugement etc.

Malb. Les tenemenz qe sount en demande ne sount mye les tenemenz compris en [7] la fyn. Prest etc.

Et alii e contra.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 94, Linc.

William son of John son of Stephen de Horblyng, by William le Engleis his attorney, demands against William Aunsel de Horbling seven messuages and a half (*et dimidium*) and forty-six acres of land and three roods of meadow in Horbling as his right and inheritance, and into which William Aunsel has no entry, unless by (*per*) Anselm de Grantham, sometime husband of Margaret de Horbling, the cousin of [the demandant], whose [Margaret's] heir he [the demandant] is, who [Anselm] demised them to him [William Aunsel], and whom [Anselm] in his lifetime Margaret could not gainsay.

William Aunsel, by William de Horbling his attorney, after formal defence, says that [the demandant] can claim nothing in the tenements on (*de*) the seisin of Margaret, cousin etc.; for he says that on the octave of the Purification in 20 Edw. I. in the King's court here, before J. de Meting-

[1] *Vulg.* p. 80. Text from *M*: compared with *B*, *P*. [2] vj. *B*. [3] avez demande *P*; avietz eu *B*. [4] de mauveyse fourme *B*. [5] avez afferme *P*. [6] A. de C. pleygnaunt *P*. [7] ne sount contenuz deinz *B*.

18. HORBLING *v.* AUNSEL.[1]

By demanding a view of the tenements the tenant waives pleas to the form of the writ. An averment that the tenements in demand are not comprised in a fine is allowed. Use in writs of 'half' and 'moiety.'

A man brought a writ which ran thus: 'Command . . . [that he render] seven and a half messuages.'

Malberthorpe. Judgment of the writ; for the Chancery form is 'and the moiety of a messuage': not 'half.'[2]

Scrope. You have had a view, and thereby you have affirmed the writ good.

Malberthorpe. A writ out of form can never be good.

STANTON, J. Answer over. You have affirmed the writ good.

Friskeney. In such a year of King Edward, father of the now King, before Sir John of Metingham etc., a fine was levied between A. of C., plaintiff, and W. of W. and E. his wife, deforciants, of these with other tenements: to wit, that W. and E. his wife made conusance that the tenements were the right of A. etc., and E. and her heirs would warrant. And you are E.'s heir. Thus, if we were impleaded [by a stranger, you would have to warrant us]. Judgment etc.

Malberthorpe. The tenements that are in demand are not those that are comprised in the fine. Ready etc.

Issue joined.

Note from the Record (*continued*).

ham and his fellows, a fine was levied between William Aunsel, plaintiff, and the said Anselm of Grantham and Margaret his then wife, impedients, of the said tenements along with other tenements, to wit, nine messuages, two parts of a mill, thirteen bovates of land, forty-six acres and a half and a rood of meadow, four poundworths, twelve shillingworths and three pennyworths of rent in the vill of Horbling etc.; and that by this fine Anselm and Margaret make conusance that the said tenements were the right of William as those that he had of their gift, to hold to William and his heirs for ever of the chief lords of that fee, by the service to the said tenements belonging, and they granted for them and for Margaret's heirs that they would warrant the tenements to William and his heirs against all men for ever; and he produces a 'part' of the fine that witnesses this;

[1] Proper names from the record. [2] As to this, see above, p. 99.

Note from the Record (*continued*).

and therefore he says that, if he were impleaded for the tenements by anyone else, [the demandant] as heir of Margaret would be bound to warrant them to him; and thereof he prays judgment.

[The demandant] says that by the said fine he ought not to be repelled from action so far as his demand for these tenements is concerned; for he

19. ANON.[1]

Meen vers tenaunt par la ley d'Engleterre.

Un bref de meen fut porté vers tenant par la ley d'Engleterre.

Heng.[2] Nous n'avoms en la seignurie forqe a terme de nostre vie. Et c'est un bref de dreit qe veut estre porté vers verrey seignour. Jugement etc.

Tamen fut chacé a respondre a son fet, qe voleyt q'il ly dust aquiter par *Berr.*

Heng. Il se attorna al destreinant par son fet demene. Prest etc.

Et alii e contra.[3]

20. PATESHULL *v.* BRAY.[4]

Waust, ou le defendaunt fust assigné gardeyn le pleyntif par le piere le pleyntif, et le bref s'abati etc.

Water le fitz Jon de Pateshulle[5] porta son bref de wast vers Mestre H. de Bray,[6] et se pleynt qe a tort avoit fet wast etc. des tenemenz q'il avoit en garde de son heritage etc. Et dit qe Jon son piere fut seisi de ceux tenemenz, et hors de sa seisine si enfeffa cesti Wauter en fee tanqe il fut deden age, et fit mesme cesti H. son gardeyn, et ly bailla les tenemenz a garder tanqe a son age, et issint qe mesme cesti H. tanqe il avoit la garde fit wast etc. a tort et a sa disheretison etc.

Fris. Il ount counté qe le piere W. sy ly enfeffa tancum il fut dedens age, et fut H. son gardeyn. Par qey par lour counte q'il supposent qe nous sumes gardeyn de fait et par lour bref supposent il qe nous sumes gardeyn par reson de seignurie. Jugement, de la variaunce entre le counte et le bref.

[1] *Vulg.* p. 77. Text from *R*: compared with *B*. [2] Ingh. *B*. [3] *Om.* et . . . contra *R*; *ins. B*. [4] *Vulg.* p. 81. Text from *R*: compared with *B* (a briefer version). Headnote from *B*. [5] No name *B*. [6] Henri de Gray *B*.

Note from the Record (*continued*),

says that the tenements which he now demands and which he placed in his view are not contained in the fine; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the morrow of St. Martin.

19. ANON.

Action of mesne against tenant by the curtesy.

A writ of mesne was brought against a tenant by the curtesy.

Ingham. We have no more than a term for our own life in the lordship. And this is a writ of right and should be brought against a very lord. Judgment etc.

However, he was driven by Bereford, C.J., to answer to his deed which said that he would acquit [the defendant].

Ingham. He attorned to the distrainor by his own act. Ready etc.

Issue joined.

20. PATESHULL *v.* BRAY.[1]

A father (*A.*) enfeoffs his infant son (*B.*) and delivers the land to *C.* to be kept for the infant. *A.* dies leaving *B.* his heir. If *C.* commits waste, the writ of waste against a guardian will not lie against him. *Qu.* whether a writ of account will lie.

Walter, son of John of Pateshull, brought his writ of waste against Master H. de Bray, and complained that wrongfully he had done waste etc. in the tenements which he had in wardship of the plaintiff's inheritance etc. And he said that John his father was seised of these tenements and out of his seisin enfeoffed this Walter in fee and made this H. his guardian and bailed him the tenements to keep until [the plaintiff's] age, and the said H., while he had the wardship, did waste etc., wrongfully and to his disheritance.

Friskeney. They have counted that [the plaintiff's] father enfeoffed [the plaintiff] while under age, and that H. was his guardian. Thus by their count they suppose that we are guardian *de facto*, while in their writ they suppose that we are guardian by reason of lordship. Judgment of the variance between count and writ.

[1] Proper names uncertain.

Malm. Nous avoms dit qe vous avez fet wast etc. et qe vous aviez la garde, et avoms assigné coment, et autre bref ne poums avoir en ceo cas. Et vous dedites poynt qe vous n'aviet la garde ne qe vous n'avet fet wast. Jugement.

Berr. Vous avez dit q'il est feffé, par qey vous avez meyus assigné q'il fut vostre baillif qe vostre gardeyn. Par qey vous poet avoir vostre recoverer vers ly s'il eit fet wast par bref d'acounte etc.

Pass. Si nous portoms nostre bref d'acounte, il dirra q'il n'avoit unqes rien de nostre baillie. Par qey etc. Estre ceo, mesqe le piere enfeffast son heir tanqe il fust dedens age, ceo ne tout mye qe le chef seignour deit avoir la garde. Par qey, mesqe il seit feffé, ceo ne prove pas qe il ne deit respondre a son bref de wast.

Ber. Donqe volez vous dire qe H. est chef seignour ?

Pass. Si le bref git vers le chef seignour, moult plus fort vers cely q'est estrange q'ad ocupé la garde. Ore dioms nous qe H. après la mort nostre piere ocupa la garde et fist wast etc. Prest etc. Jugement etc.

Et non obstante si fut agardé q'il ne prist rienz par son bref etc.

Pas.[1] Jeo n'avera mie bref d'acompte vers luy de waust fait; et sy nous seyoms ousté de cestui bref, nous sumes saunz recoverer.

Ber. Sy moun baillif fet wauste de mesouns ou de vente de boys, il serra chargié de ceo sour ses acomptes etc. Par quey agarde ceste court qe vous ne preignetz ren par vostre bref, einz seyetz en la merci.}

21A. ANON.[2]

Mordauncestre ou la parole demora.

Mordauncestre vers enfaunt deinz age, qe fut feffé par son pere de heritage sa mere, et avoit son age.

Une assise de mordauncestre fut porté vers un Jon fitz Adam, qy fit defaute al primer jour. La resomons agardé. Autrefeze fit defaute. L'assise fut agardé et prest fut de passer. Sur ceo vynt un Jon le tenant et dit qe Eline sa miere morust seisi de ceux tenemenz

[1] The following from *B.* [2] Text of this version from *R.* The second head-note from *S.*

Malberthorpe. We have said that you have done waste etc. and that you had the wardship, and we have assigned how this is so, and other writ could we not have in our case. And you do not deny that you had the wardship nor that you did waste. Judgment.

Bereford, C.J. You have said that [the plaintiff] is enfeoffed, and thereby you have made [the defendant] rather your bailiff than your guardian. So, if he has made waste, you could have your recovery against him by writ of account etc.

Passeley. But if we brought a writ of account, he would say that he had nothing as our bailiff.[1] Wherefore etc. Moreover, although the father enfeoffed his heir while he was under age, this would not deprive the chief lord of his right of wardship. Therefore although [the plaintiff] is enfeoffed, that does not prove that [the defendant] ought not to answer to our writ of waste.

Bereford, C.J. Do you wish to say then that H. is chief lord?

Passeley. If the writ lies against the chief lord, *a fortiori* it lies against a stranger who gets possession of the wardship; and we now tell you that after our father's death H. got possession of the wardship and did waste etc. Ready etc. Judgment etc.

Nevertheless it was awarded that he took nothing by his writ etc.

{*Passeley.*[2] I shall not have a writ of account against him for waste; so if we are ousted from this writ, we are without remedy.

Bereford, C.J. If my bailiff makes waste of houses or sale of woods, he shall be charged for that in his accounts etc. Therefore this Court awards that you take nothing by your writ, but be in mercy.}

21A. ANON.[3]

An infant who is entitled as tenant in tail (or who is heir apparent in tail) is enfeoffed in fee simple by his father, who was tenant by the curtesy (or tenant in tail). If a mortdancestor is brought against him, the parole will demur, for he may elect to rely upon inheritance.

An assize of mortdancestor was brought against one John, son of Adam, who made default at the first day. A resummons was awarded. Again he made default. The assize was awarded and was ready to pass. Thereupon came one John, the tenant, and said that Eline his

[1] Or 'by our bailment.'

[2] In a shorter version the following takes the place of the last four paragraphs.

[3] We have two materially different reports; but they seem to tell of the same case.

contenuz en le bref en son demene com de fee, après qy mort il entra com fitz et heir et est dedens age, et prie qe nule assise duraunt son nounage passe.

Hunt. Par le nounage Jon deit[1] l'assise targer, qar Adam son piere ly enfeffa de mesmes les tenemenz, issint qe Jon est purchasour, et de son purchas il respoundra non obstante son nounage. Et prioms l'assise.

L'assise prise sur ceu poynt, qe dit qe une Elyne aele Jon dona les tenemenz a Adam et a Elyne et a les heirs de lours corps issaunz etc., par quel doun il furent seisiz, et aveynt issue cesti Jon. Elyne morust. Adam seisi après la mort Elyné enfeffa son fitz eygné. Et prioms vos eyde.

Ing. Est Adam mort ou en vie ?

L'assise dit qe Adam fut mort.

Inge. Pur ceo qe Jon est fitz eygné Adam et Elyne a quex ces tenemenz furent donez en fee taillé q'est eynz et put clamer par purchas ou par concession[2] a sa volunté, qe par inspectioun de la court est dedens age, Jon attendez vostre age.

Et departi hors de la court sanz jour etc.

21B. ANON.[3]

A. porta un assise de mordauncestre vers un enfant deinz age, qe fit defaute. Par quai l'assise fut agardé, et le tenant resumouns. A quel jour il vient et dit par *Toud.* qe l'enfant fut deinz age et pria qe l'assise ne fut my prise de son heritage.

Hunt. Il est purchasour.

Toud. Nous vous dioms qe nostre mere morut seisi de mesme ceux tenemenz et nous seisi com de nostre heritage. Jugement.

Ing. Si sa mere morust seisi, et il est einz com fiz et heire, tut ust il entré par feffement, il purra clamer quel estat q'il voudra.

Hunt. ut prius.

Et alii econtra.

Juratores dicunt qe les tenemenz furent donez al ael l'enfant et a

[1] *Corr.* ne deit. [2] *Corr.* succession. [3] Text of this version from *S* (Hil.) : compared with *T* (Hil.).

mother died seised of the tenements contained in the writ in her demense as of fee; and that after her death he entered as son and heir; and that he is within age. And he prayed that no assize might pass during his nonage.

Huntingdon. By the nonage of John the assize should [not] be delayed, for Adam his father enfeoffed him of these tenements, so that he is a purchaser; and for his purchase he shall answer notwithstanding his nonage. We pray the assize.

The assize was taken touching this point. It said that one Eline, grandmother of John, gave these tenements to Adam and Eline and the heirs of their bodies issuing etc.; and that by this gift they were seised; and that they had issue this John. Eline died. Adam was seised after Eline's death and enfeoffed his eldest son. (And the assize prayed aid of the justices.)

Inge, J.A. Is Adam dead or alive?

The assize said that he was dead.

Inge, J.A. Inasmuch as John is eldest son of Adam and Eline, to whom these tenements were given in fee tail, and John can claim by purchase or by [inheritance] at his option, and by inspection of the Court he is [found to be] within age, await your age John.

And he departed out of the court without day.

21b. ANON.

A. brought an assize of mortdancester against an infant under age, who made default. So the assize was awarded, and the tenant was resummoned. At that day he came and said by *Toudeby* that he was within age and prayed that an assize might not be taken of his heritage.

Huntingdon. He is a purchaser.

Toudeby. We tell you that our mother died seised of these tenements, and we are seised as of our heritage. Judgment.

Ingham.[1] If his mother was seised, and he is in as son and heir, albeit he entered by feoffment, he can claim whichever estate he pleases.

Huntingdon repeated [that he was a purchaser.]

Issue joined.

The jurors say that the tenements were given to the infant's

[1] Or perhaps Inge as justice of assize.

sa femme en fee taillé, par quel don il furent seisiz et demerent[1] seisiz; après qi mort entra la mere l'enfant cum issu en la taille et tient tot sa vie; et après la mort vient le baron, pere mesme ceti, et ly enfeffa de mesme ceux tenemenz; et pus le pere entra et tient; et après son decès entra ceti; et issi est il einz. Et prierent descrecion de justice.

Hervy reherça le procès, et agarda, pur ceo qe l'enfant fut denz age et pout clamer quel estat q'il voudra, qe la parole demorast tanqe a son age.

22. ANON.[2]

Mordauncestre vers un qe voucha a garant, le garaunt fit defaute. Par quai l'assise fut agardé, non obstante qe dit fut[3] q'il fut enprisoné.

A. porta le mordauncestre vers B., qe voucha a garaunt un, et fut somouns. Al prochein jour le vouché fit defaute, et le demandant pria l'assise par sa defaute. Le tenaunt dit qe le vouché en mesme le conté fut enprisouné et est. Le vicounte temoigna le revers.

Ing. agarda l'assise par sa defaute; et dit qe, tut fut il enprisoné quia contempsit claves ecclesie, l'assise ne targereit my mès pur tiel enprisonement; mès si ceo fut pur hom[icide] ou autre felonie ce serreit autre.

Et puis vient le vouché, et voleit garantir de gree. Et ne fut pas receu pur ceo qe l'assise fut agardé.

{Nota[4] la ou homme en despisaunt la chef[5] de seynt eglise et il seit pris par tiele encheson et enprisoné, qe par sa absence ne se deit l'assise targer: par *Toud.* si pur felonie emprisoné autre est.}

23. ANON.[6]

Nota de execucioun de un anuyeté, ou une aquitaunce fust mis avaunt et dedit, et cely qe le dedit ne vint pas a l'autre jour: par quei lautre ala quitis.

Robert de Mutt' siwit d'avoir execucioun de jugement qe se fit etc.

[1] demoerent *T.* [2] Text from *S*: compared with *T.* [3] *Om.* fut *S*, *T.*
[4] This note rom *R* [5] *Corr.* les clefs. [6] *Vulg.* p. 78. Text from *B.*

grandfather and his wife in fee tail, and by that gift they were seised and remained seised; and that after their death the infant's mother entered as issue in tail and held for her whole life; and that after her death came her husband, the infant's father, and enfeoffed [the infant] of these tenements;[1] and that afterwards the father entered and held; and that after his death [the infant] entered; and that thus is he 'in.' (And [the jurors] prayed the award of the justices.)

Stanton, J., rehearsed the process, and awarded that, since the infant is within age and can claim whichever estate he pleases, the action must stand over until his full age.

22. ANON.[2]

Imprisonment of a vouchee as a cause for deferring an assize of mortdancestor. Contrast between imprisonment for felony and imprisonment of an excommunicate.

A. brought the mortdancestor against B., who vouched C. to warrant. The vouchee was summoned, and at the next day made default. The demandant prayed that the assize might be taken for his default. The tenant says that the vouchee was and is imprisoned in the same county. The sheriff testified the contrary.

Inge, J.A., awarded the assize for his default and said that if he were imprisoned for contemning the keys of the Church, the assize would not be deferred for such an imprisonment, but that it would be otherwise were he imprisoned for homicide or other felony.

Afterwards the vouchee appeared and desired to warrant gratis. He was not received, for the assize had been awarded.

{Where[3] a man has despised [the keys] of Holy Church and is for that cause taken and imprisoned, an assize shall not tarry for his absence. *Toudeby* said that it would be otherwise in a case of felony.}

23. ANON.[4]

After judgment in an action of annuity, the plaintiff grants a release to the defendant, but then sues execution. Procedure in such a case.

Robert of M. sued to have execution of a judgment made on a writ

[1] Here the husband is tenant by the curtesy and the son is tenant in tail.

[2] This case is Fitz. *Sauer de defaute*, 71.

[3] One book gives this note and no more.

[4] We depend on one manuscript.

en un bref d'anuité vers W. de la Ceyncroiz. William dit qe execucioun ne se duist faire, pur ceo qe Robert luy avoit fait aquitaunce del anuité et des arrierages, et après jugement rendu. Et mist avaunt aquitaunce a la court. Par quey bref luy fust graunte de garnir [1] R. de venir a respoundre pur quey il siwit un execucioun encountre soun fet demene. Qe vient en court et dit qe nyent soun fet. Et avoit jour etc. de faire venir les tesmoignes nometz en l'aquitaunce etc. A quel jour R. ne vient pas. Par quey fuist agardé qe W. alast quites a Deu et qe l'execucioun se targ[east]; et l'aquitaunce qe demora [2] vers la court dedit fuist a W. rebaillé etc.

24A. BATECOKE *v.* COULYNG.[3]

Douwere ou dit fuist q'ele ne pout douwere deservir.

Mirabelle qe fuist la femme Jon de B. porta soun bref de douwer etc., et demaunda la terce partie d'un mees, deux molyns, xx. acres de terre Englesses, une acre de terre Cornewaille, et ij. s. j. d. ob. de rente ove les apportinaunces etc.

Scrop. La demaunde doit estre acordaunt au bref, qe luy serroit graunté en la chauncellerie. Mès ele n'averoit nul bref acordaunt a ceste demaunde. Jugement du bref.

Lauf. Une acre de terre Cornewaille content une carué de terre, et issi ne fet yl pas aillours.

Ber. C'est cas de douwere, q'est favorable. Par quey dites outre.

Scrop. Actioune ne puist ele avoir, qar ele n'est mye de tel age q'ele pusse douwere deservir.

Lauf. A la court est a ver.

Scrop. Soeffrez, Sire, q'ele veigne a vous et soyt examiné.

Stanton. Ceo ne chiet mie en examinement, einz en agarde.

Et fuist agardé de plein age. Par quey ele recovera. Et fuist examiné coment soun baroun et luy contindrent en list etc. Mès ele ne deveroit mye estre examiné pur ceo qe les justices etc.

[1] graunte dag' *B.* [2] Word uncertain *B.* [3] *Vulg.* p. 78. Text of this first version from *B.*

of annuity against William of Ceyncroiz. William said that execution should not be made, for Robert had made him a release of the annuity and the arrears, and this after judgment rendered. He produced the release to the Court. So a writ was granted to warn Robert to come and say why he sued execution against his own deed. He came and said that it was not his deed. He had a day etc. to cause the witnesses named in the deed to come. On that day he did not appear. So it was awarded that William might go quit, and that execution should tarry, and the deed, which had remained with the Court [after being] denied, was delivered out to William.

24A. BATECOKE *v.* COULYNG.[1]

The Cornish acre. The age at which dower can be earned.

Mirabel, wife that was of John of B., brought her writ of dower etc. and demanded the third part of a messuage, two mills, twenty English acres of land, and one Cornish acre of land and 2*s.* 1½*d.* of rent with the appurtenances etc.

Scrope. The demand should accord with the writ which would be granted to her in the Chancery. But she never could have any writ agreeing with this demand. Judgment of the writ.

Laufer. One acre in Cornwall contains a carucate of land, and elsewhere that is not the case.

Bereford, C.J. This is a case of dower, which is favoured by law. So plead over.

Scrope. She cannot have an action, for she is not of an age to earn dower.

Laufer. That is for the Court to see.

Scrope. Permit her, Sir, to come to you to be examined.

Stanton, J. It is a matter, not for examination, but for judgment.

And she was adjudged of full age. So she recovered. (And she was examined as to how she and her husband behaved in bed. But she ought not to be examined, because the justices etc.)[2]

[1] Proper names from the record. Each version of this case comes from a single manuscript.

[2] In the only book in which this report is found the passage that we bracket is part of the text.

24B. BATECOKE *v.* COULYNG.[1]

Mirable ke fu femme Thomas Badcocke porta sun bref de dowere *unde nichil habet* vers Johan de C., e qe a tort la deforce la terce partie de ij. parties de xv. mees, ij. molins ewerettez, e vj. acres Corwalechis e xl. acres Englechez ove les appurtenances etc. E *Laufer* tendi de conter son count.

Scrop. Demandoms jugement de ceste demande; qe chescone demande deit estre acordant au *precipe*; mès en la chauncelerie vous n'averez nul *precipe* qe dirreit qe il rendesit une acre Corwaleche.

Laufer. Si jeo fuisse en une assise de novele disseisine, jeo serrei receu en ma pleinte a mettre une acre Corwalechez qe contrevault une carué de terre.

Ber. a *Scrop.* Dites autre chose.

Et dixit: Sire, si vous veez qe ele soit de tiel estat q'ele puet dower deservir, nous la r[espondroms].

Laufer. A ceo ne avendrez mie, qe vous avez excepcioné a nostre demande, e issi a nostre bref, e ore excepcionez[2] a nostre persone; par quoi etc.

Bereford. Vous dites qe si nous veoms q'ele puet dowere deservir, vous lui r[espondrez]; mès si nous agardoms par de cea qe ele soit able, ceo serra pur vin e chandeil.

Scrop. Sire, la examinez.

Bereford. Nanil, nous la verrom, e vous la examinerez.

Et postea visa fuit a iusticiariis, e lui agarderent seisine. Unde pluribus mirabatur, quia non apparuit etatis viij. annorum.

Et *Bereford* dixit: Si le baroun ne fust geaunt, ele poet dowere deservir au temps qe son baroun morust. Et ceo fust viij. jours après le Noel prochein passé etc.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 1d, Corn.

Mirabella, wife that was of John Batecoke, demands against John son of John Coulyng de Bodmina the third part of two parts of fifteen messuages, four tofts, two water-mills, twenty-one shops, one dove-cote, one acre of land Cornish (*unius acre terre Cornub'*), forty acres of land English (*Angl'*), five acres of wood, thirty-three shillingworths, five pennyworths and one

[1] Text of this second version from *Y* (f. 140d). [2] excepcioner *Y*.

24B. BATECOKE *v.* COULYNG.

Mirabel, wife that was of Thomas Batecoke, brought her writ of dower *unde nihil habet* against John of C., and said that wrongfully he deforced her of the third part of two parts of fifteen messuages, two water-mills, and six acres Cornish and forty acres English with the appurtenances etc. And *Laufer* was ready to count his count.

Scrope. We pray judgment of this demand; for every demand should accord with a *praecipe*; but in the Chancery you shall have no *praecipe* saying 'that he render a Cornish acre.'

Laufer. If I were in an assize of novel disseisin, I should be received to put in my plaint a Cornish acre, which is equivalent to a carucate of land.

BEREFORD, C.J., to *Scrope.* Say something else.

[*Scrope*]. Sir, if you see that she is of such a condition that she can deserve dower, we will answer.

Laufer. To that you cannot get, for you have excepted to our demand and so to our writ, and now you except to our person; therefore etc.

BEREFORD, C.J. You say that if we see that she could deserve dower, you will answer her. But if at this point we were to award that she was able, that would be for wine and candle.[1]

Scrope. Examine her, Sir.

BEREFORD, C.J. No, we will see her, and you shall examine her.

Afterwards she was seen by the justices, and they awarded her seisin. Whereat many were surprised, for she did not seem to be eight years old.

And BEREFORD, C.J., said: If the husband were not a giant, she could deserve dower at the time when he died. (And that was eight days after Christmas last past.)

Note from the Record (*continued*).

half-pennyworth of rent in Bodmina, Penbugel and Bodyniel, and against Roger le Bera de Bodmina the third part of ten messuages, two shops, three acres of land Cornish, twenty-four acres of land English, and three shillingworths and eleven pennyworths of rent in Bodmyna as her dower etc.

John and Roger say that she ought not to be admitted to demand dower

[1] Apparently meaning 'for good and all.' No other plea would be allowed.

Note from the Record (*continued*).

in this behalf; for they say that at the time of the death of John, by whose endowment etc., she was not of such an age that she could deserve dower according to the law and custom of the realm; and this they are ready to aver; and they pray judgment.

Mirabella says that at the time of her husband's death she was of sufficient age; and this she is ready to aver as the Court [shall award].

John and Roger, being asked by the Justices as to the time of the death of John sometime husband [of the demandant], say that in truth he died about the eighth day after Christmas last past. (*Note continued on opposite page.*)

25. LOVEDAY *v.* ORMESBY.[1]

Dette demaundé par un obligacioun et partie seute bon, ou le pleintif counta del entier qe le defendaunt se obliga: et puis fuist nounsewy etc.

William Loveday porta son bref de dette etc., et counta q'une Isabelle graunta estre tenuz en cc. li. a meisme cestuy W.

Herle. Qei avetz vous de la dette?

Loveday. En droit de c. et xl. li., veez yci son fet demene. Et qaunt al remenaunt, suyte bone.

Toud. Il ad counté qe I[sabelle] luy graunta estre tenuz en l'entier, le quel graunt chiet en especialté. Et en affermaunt s'actioun sy met il avaunt un fet qaunt al c. et xl. li., et qaunt al remenant yl tend sute. Jugement du counte.

Loved. Vous nous estes tenu en taunt, et nous n'avoms fet forsqe de les c. et xl. li. Par quey nous ne poms autrement counter.

Frisk. Chescun graunt et chescun demaunde par resoun du graunt doit estre par especialté. Mès d'autre contracte com de baille, ou de apprest si puist homme demaunder par sute. Dount desicome vous demaundetz cette dette par resoun du graunt et ne moustrez especialté sy noun de partie, jugement.

Stanton. S'yls eussent counté de deux contractes ou d'un graunt ou de un contracte yl eust meuz fait.

Et le pleyntif fuist nounsiwy.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 13d, Camb.

William de Ormesby and Sibilla his wife were summoned to answer William Luveday of a plea that they render to him two hundred and sixty-

[1] *Vulg.* p. 78. Text from *B*.

Note from the Record (*continued*).

And for that it seems to the Court by the aspect of the body of Mirabella that at the time of her husband's death, since when so short a time has elapsed, she was of marriageable age for the acquiring of dower, especially as she now appears to be of sufficiently mature age for dower, and John and Roger say nothing else to repel her from her action of dower, therefore it is awarded that she recover her seisin thereof, and that John and Roger be in mercy, etc.

25. LOVEDAY *v.* ORMESBY.[1]

A 'grant' that one is bound to pay a sum of money cannot be sue upon unless it is proved by specialty.

William Loveday brought his writ of debt and counted that one [Sibilla] granted that she was bound to him in two hundred pounds.

Herle. What have you for the debt?

Loveday.[2] As to a hundred and forty pounds, see here your own deed. As to the residue, good suit.

Toudeby. He has counted that [Sibilla] granted that she was bound in the whole amount, and such a grant is a matter for specialty. And in affirmance of his action he produces a deed for a hundred and forty pounds, and as to the residue he tenders suit. Judgment of the count.

Loveday. You are bound in the whole sum and we have a deed for only a hundred and forty pounds. So we cannot count in any other manner.

Friskeney. Every grant and every demand by reason of a grant ought to be by specialty. But as regards other contracts, as, for instance, bailment or loan, one can demand by suit. So, as you demand this debt by reason of a grant and show specialty only for a part, we pray judgment.

Stanton, J. If they had counted on two contracts, or on a grant [and] a contract, they would have done better.

And the plaintiff was nonsuited.

Note from the Record (*continued*).

two pounds, fifteen shillings and eight pence, which they owe and unjustly detain. [The plaintiff], by William de Quye his attorney, says that whereas

[1] Proper names from the record. [2] Apparently the plaintiff in person.

Note from the Record (*continued*).

Sibilla on [23 Nov. 1296] Friday the feast of St. Clement in 25 Edw. I. at Swaffham Priors granted herself to be bound to [the plaintiff] in the said debt, to be paid to [the plaintiff], to wit, a moiety at Easter then next and the other moiety at Michaelmas then next, [the plaintiff] often requested Sibilla while she was sole, and, after William de Ormesby espoused her, often likewise requested William de Ormesby and Sibilla to render to him the said moneys, but they still detain the same from him and refuse to render them:

26. ENGLEFIELD *v.* OXFORD (EARL OF).[1]

Nota d'engettement de garde ou le defendaunt dit qe l'auncestre l'enfaunt tint de lui : et alii econtra.

Un home porta soun bref d'engettement de garde vers le Counte de Oxenforde, et counta qe la garde a luy appendoit par la resoun q'un tyent de luy par les services qe dounent garde et mariage ; de quele garde yl fuit seisi, si la qe le Counte et les autres nomez en bref a force et as armes etc.

Toud. La ou yl dit qe l'auncestre l'enfaunt tient de luy, la dyoms nous q'il tyent de nous et nyent de luy. Prest etc.

Herle. Quey respount il al engettement, qar nous fumes seisi de cele garde pesiblement un quarter del an si la qe vous etc. ?

Toud. Après la mort nostre tenaunt sy entrames nous freschement, pur ceo qe nous trovames qe cestuy fuist de soun tort abatu, et nous luy oustames, come bien nous lust.

Herle. Jugement, de puis qe vous avietz conu l'engettement.

Ber. Yl vous dit q'il entra ut supra. Ne respount yl assetz ?

Herle. Qe Jon tyent de nous par services qe dounent garde : prest etc.

Et alii econtra.

Nota qe homme ne serra jamès atteint de ravisement ne de engettement de garde sy trové soit q'il eit droit en la garde. Mès sy trové soit q'il n'ad mye droit en la garde, tout soit issint qe le pleintif n'eit mye droit, le pleintif recovera.

[1] *Vulg.* p. 79. Text from *B.*

Note from the Record (*continued*).

damages, forty pounds. And as to two hundred and forty pounds of the debt, he produces a writing under Sibilla's name; and as to the residue, he produces suit.

[The defendants] by their attorney come, and [the plaintiff] does not prosecute. Therefore be he and his pledges to prosecute in mercy, and be inquiry made for the names of the pledges.

26. ENGLEFIELD *v.* OXFORD (EARL OF).[1]

The rightful claimant of a wardship may eject another claimant, at least while the abatement is fresh.

A man brought his writ of ejectment from a wardship against the Earl of Oxford, and counted that the wardship belonged to him, for the reason that a certain person held of him by services that give wardship and marriage; and that he was seised of the wardship, until the Earl and the others named in the writ [ejected him] by force and arms.

Toudeby. Whereas he says that the infant's ancestor held of him, we tell you that he held of us and not of him. Ready etc.

Herle. What does he answer to the ejectment? For we were peaceably seised of this wardship for a quarter of a year until you [ejected us].

Toudeby. After our tenant's death we at once entered because we found that [you] had wrongfully abated, and we ejected [you], as well we might.

Herle. You have confessed the ejectment, so we pray judgment.

Bereford, C.J. He tells you that he entered as above. Is not that answer enough?

Herle. John held of us by services that give wardship. Ready etc.

Issue joined.

Note that a man shall never be attainted of ravishment of ward or ejectment from wardship if it be found that he has right in the wardship. But if it be found that he has not, the plaintiff shall recover, although the plaintiff himself has no right.

[1] Proper names from the record.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 61, Oxf.

Robert de Veer, Earl of Oxford, and Roger le Baillif de Medmenham were attached to answer Roger de Englefeld of a plea wherefore (whereas the wardship of a messuage, a carucate of land, ten acres of meadow, seven acres of wood, and a hundred shillingworths of rent in Ladebrook belongs to Roger de Englefeld until the lawful age of John, son of John de Leye, since John de Leye held the messuage, land, meadow, wood and rent of him by military service, and Roger de Englefeld had long been in pacific seisin of the said wardship) the Earl and Roger le Baillif, together with Richard de la Cornere, Walter le Ferur de Yeldham, William de Hameldon and Peter Reel, while the said heir was within age, violently ejected Roger from that wardship, and with force and arms took and carried away goods and chattels of Roger there found, to the value of forty pounds, and other enormous things to him did, to his grave damage. Roger de Englefeld complains that, whereas John de la Leye, father of the heir, held of him the tenements by homage and fealty and by the service of half a knight's fee, to wit twenty shillings to the King's scutage when it ran at forty shillings and so in proportion, whereby the wardship of the tenements would pertain to Roger de Englefeld, and the same Roger was in peaceful seisin of the said wardship, the Earl and Roger le Baillif together with etc., while the

27A. GOLDINGTON *v.* BASSINGBURN.[1]

Bref de conspiracie, ou le pleintif dit qe le defendaunt avoit sewy un faux statut de deux c. liv. pur lui enginer de sa terre etc.

William de G. porta soun bref de conspiracie vers Ingram de B. chevalier et autres etc., et counta qe a tort par lour conspiracie avoient siwy un faux statut de cc. livres pur luy enginer de sa terre, a ses damages etc.

Roust. deffendit etc. toute manere conspiracie et qauntqe est encountre la purveyaunce etc. et les damages etc. Et n'entendoms mye qe a ceste conte devietz estre respondu, qar bref de conspiracie est douné par statut, et c'est en deux[2] cas : c'est assavoir, ou homme siwe plè par chaumpart aver de la terre, ou la ou enprisonement est fait par faux enditement. Et cel est en l'un nel l'autre. Jugement.

Ber. Dounqe voilletz vous dire qe cestui bref n'est douné forsqe en deux cas ?

[1] *Vulg.* p. 81. Text from *B.* [2] deu *B.*

Note from the Record (*continued*).

heir was within age, on Monday next before the feast of St. Augustin in 35 Edw. I. [1306–7] violently ejected him and by force and arms took and carried away his goods there found, to the value etc., to wit, wheat, rye, barley, and oats: damages, a hundred pounds.

The Earl and Roger le Baillif, by their attorney, come and defend tort and force; and as to the goods and chattels, they say that they did not take or carry away any chattels of Roger de Englefeld as he charges them; and of this they put themselves upon the country; and as to the wardship, they say that John, the heir's father, held the tenements of the Earl by military service, to wit by homage and fealty and the service of one knight's fee, and that after his death Roger of Englefeld would have taken to himself (*voluit occupasse*) the wardship, and the Earl, so soon as the notice of the death of John his tenant came to him, at once (*recenter*) seized the tenements into his hand by way of wardship and removed Roger therefrom, as well he might.

Roger of Englefeld says that John, the father etc., held the tenements by military service of Roger as aforesaid, and not of the Earl, as the Earl and Roger le Baillif say; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the morrow of Martinmas.

27A. GOLDINGTON *v.* BASSINGBURN.[1]

The scope of the statutory action of conspiracy discussed. Writ quashed for a formal defect.

William of G. brought his writ of conspiracy against [John] of B., knight, and others [named in the writ,] and counted that wrongfully and by their conspiracy they sued a false statute [merchant] for two hundred pounds to do him out of his land, to his damage etc.

Ruston defended all manner of conspiracy and all that is against the provision etc. and the damages etc. And (said he) we not think that you ought to be answered to this count, for the writ of conspiracy is given by Statute in two cases: namely, where a man sues a plea to have champart of the land, and where there is imprisonment on a false indictment. The present is neither the one case nor the other. Judgment.

Bereford, C.J. Do you mean, then, that this writ is given only in two cases?

[1] Proper names from the record. We are dependent on a single manuscript.

Roust. Nous entendoms qe statut le veot. Par quey nous prioms qe vous voilletz servir le statut.

Ber. Le statut de W. seconde doune bref generalment de placito conspiracie [1] etc. Mès pur ceo qe aviz fuist au Roy qe cest estatut fuist trop general, yl ordeyna un autre estatut qe nome certeyne cause de conspiracie; et sy ad yl fet a cestui bref.

Roust. Unqore ne doit il a cestuy bref estre respondu, qar actioun par cestuy bref est douné de chose qe chiet en fet et ne mie en voler. Et il ad ren moustré q'est en fet: c'est assavoir, qe nous sumes seisi de la terre ne autrement. Jugement.

Toud. Nous avoms dit qe vous siwites fausement le statut, nyent sachaunt celuy a qi la conissaunce duist avoir esté fait; et de cele fausine et desceite estes atteinte. Jugement.

Roust. ut prius.

Et adiornetur.

27B. GOLDINGTON *v.* BASSINGBURN.[2]

William de Goldigtone porta soun bref de conspiracy vers Jon de Basigburne e autres iij., e se pleint qe atort aveint conspiré a Chalmeford, l'an seconde cestui Roi un statut marchaund estre fait a Wyncestre l'an xxv. le Roi pere cestui Roi, en qel statut fut contenu qe Rauf le Gras dut estre tenuz e obligé a Richard le Gras son frere en deux mille livres, par vertue de quel statut saunz le su Richard fut siwy ceins un bref de execucion pur avoir les terres e les tenemenz que furent en la seisine le dit Richard jour de la conisaunce, le quel Richard avoit lessé deux maneirs en C. a William de Goldigtone; e en le noun Richard par les dys Jon e les autres saunz su le dit Richard fist swyte [3] taunqe les maneirs avantdiz furent liverez, e le dit Richard ces maneirs au dit Jon grauntereit pur le temps de la dette; par qei mesme cestui W. de Goldingtone suit devant le Roi taunqe cel statut pur faus fut atteint: atort e encontre la forme del statut de ceo nadguers purvueu, e a damages le dit W. mil livres etc.

Scrop defendi tort e force e qaunqe est encontre la forme del statut e les damages W. etc. E n'etendom mie qe a teu counte deive estre

[1] The termination given in full *B.* [2] Text of this version from *Y* (f. 225); there ascribed to Hil an. 5. [3] fait *expuncted Y.*

Ruston. That is how we understand the Statute, and we pray you to observe it.

Bereford, C.J. The Statute of Westminster II. gives a writ in a general way for a plea of conspiracy etc. But the King, being advised that this Statute was too general, ordained another which names the cases of conspiracy; and this he has done in this writ.[1]

Ruston. Once more, he ought not to be answered to this writ, for action by this writ is given for what is done and not for what is [merely] willed. And he has shown nothing done: as, for example, that we are seised of the land or the like. Judgment.

Toudeby. We have said that you falsely sued this statute [merchant,] without the knowledge of the supposed conusee, and of that falsehood and deceit you are attainted. Judgment.

Ruston repeated his plea.

Case adjourned.

27b. GOLDINGTON *v.* BASSINGBURN.

William of Goldington brought his writ of conspiracy against John of Bassingburn and three others, and complains that wrongfully in the second year of the present King they conspired at Chelmsford that a statute merchant had been made at Winchester in 25 [Edward I.], in which statute was contained that Ralph le Gras was held and bound to Richard le Gras his brother in two thousand pounds, by virtue of which statute, without Richard's knowledge, a writ of execution was sued in this court to have the lands and tenements which were in the seisin of the said [Ralph][2] on the day of the conusance, and [Ralph][2] had leased two manors in C. to William of Goldington, and suit was made by John and the others in the name of Richard, but without his knowledge, insomuch that those manors were delivered, [to the intent that] Richard should grant them to John for the time of the debt, so that William sued [in the King's Bench] until this statute was attainted as false: wrongfully and against the form of the statute for that case lately provided and to William's damage, one thousand pounds.

Scrope defended tort and force and all that is against the form of the statute and the damages of William etc. And [said he] we do not

[1] The statutes referred to seem to be Art. sup. cart. 28 Edw. I. c. 10, and Definitio Conspiratorum, 33 Edw. I. See also the Stat. de Conspiratoribus of uncertain date (Statutes, vol. i. p. 216). The last clause of the speech is not very intelligible.

[2] See the French text.

r[espondu]; qar le bref volt qe Jon e les autres duissent avoir conspirez en l'an seconde cestui Roi de un statut fait en l'an xxv. le Roi E. pere etc., com jescon conspiracie e ordinaunce[1] deivent estre precedent de[2] la chose conspiré ou ordiné etc.; e demandom jugement.

Herle. Nostre pleinte est qe vous fausement conspirastes en l'an seconde cesti Roi a C. un statut estre fait l'an xxv. de[3] E. le pere etc. a W. etc., qe ne fut nient fait, e ceo fut atteint devant le Roi.

Ber. a *Scrop.* Dites autre chose.

Scrop. Uncore demandoms jugement de cestui bref, qar son bref voet qe nous conspirames cesti statut a profit Richard, nient nomé a cestui bref. Jugement etc.

Herle. Nous avoms dit qe par vostre conspiracy e vostre faus alliaunce nous sumes endamagez de mil livres etc. Qe r[esponez] a ceo?

Scrop. Vous dites ceste conspiracy estre faite a vous e a Richard, e ne assummez mie les damages a Richard, mès a vous meymes. Jugement etc.

Herle. Nous dioms qe vous conspirastes un statut estre fait a Richard, le quel ne fut unqes fait, par qei nous resumes damage.

Scrop. A cestui bref ne devez estre r[espondu], qar en le comensement il nous fet conspir[atours], e en le parclos il nous fet procurours. Jugement de la variance etc.

Ber. Ces vij. aunz ne estudi joe tant suz un bref pur vostre dit, qe rien ne vaut.

Herle. Nostre accion si est fundu suz iij. choses. La une est qe vous conspirastes entre vous a C. un statut estir fait a W. qe ne fut unkes fait a W. L'autre qe vous a nous enmachinastes travaus e despenses. La terce qe vous procurastes une swyte vers nous, par quele suite par jugement de ceste court nous fumes ousté de nos maneirs.

Scrop. Jugement ne deit estre procuré etc. einz deit estre de ley.

Ber. Tut ne seit le jugement par nous[4] procuré, vous saviez la suite suz qei jugement se fit, e de vostre faus ordinaunce[5] se pleinent il.

Herle. Par vostre faus alienaunce[6] etc., e sur ceo procurastes une suite estre fait ceinz en ceste court, su qei un jugement se fit, le

[1] *Corr.* alliaunce (?). [2] la *Y.* [3] a *Y.* [4] *Corr.* vous (?). [5] *Corr.* alliaunce. [6] *Corr.* alliaunce.

think that you should be answered to this count; for the writ supposes that John and the others in the second year of the now King conspired about a statute made in A.R. 25 of the late King, whereas every conspiracy and alliance[1] ought to be precedent to what is conspired and devised; so we pray judgment.

Herle. Our plaint is that at C. in the second year of the now King you conspired [to allege] that a statute was made at W. in 25 Edward [I.], which statute was not made, and this was proved[2] before the King.

Bereford, C.J., to *Scrope.* Say something else.

Scrope. Once more we pray judgment of this writ, for it says that we conspired this statute for the profit of Richard, who is not named [as party] in this writ. Judgment.

Herle. We have said that by your conspiracy and false alliance we are damaged to the amount of a thousand pounds. What say you to that?

Scrope. You say that this conspiracy was made against you and [Ralph],[3] and do not state the damage to [Ralph],[3] but only to yourself. Judgment.

Herle. We say that you conspired a statute made in favour of Richard, which was never made, and that thereby we received damage.

Scrope. To this writ you ought not to be answered, for at the beginning it makes us 'conspirators,' and in the final clause it makes us 'procurers.' Judgment of the variance.

Bereford, C.J. These seven years I never was put to study a writ so much as this; but there is nothing in what you say.

Herle. Our action is founded on three things. First, you conspired among yourselves at C. that a statute, which was never made, was made at W. Secondly, you machinated against us travail and expense. Thirdly, you procured a suit against us, whereby under judgment of this Court we were ousted from our manors.

Scrope. Judgments are not to be 'procured'; they proceed from law.

Bereford, C.J. If the judgment was not 'procured' by [you], still you knew the suit upon which the judgment was made, and their complaint is of your false alliance.[4]

Herle. By your false alliance etc., and thereupon you procured a suit to be made in this court, upon which a judgment was made,

[1] See the French text.
[2] Lit. 'attainted.'
[3] See the French text.
[4] See the French text.

quel jugement fust defait et pur une deceite trové par vostre faus conspiracy.

Scrop. Donqes poez vous avoir un bref de disseite. Jugement de cestui bref.

Herle. La disseite fut trové e ateint, mès de ceo qe vous e les autres purpensates cele malice pur[1] la quele il fust grevé e de ceo se pleint il etc.

Ber. Si vous seez de moun counseil, joe pri vostre counseil de mestre une busoigne en oewre, tute seit la chose mauvoise en sey, si vous ne sachez le mal, pur vostre counseil ne porterez nul penaunce. Ausi die joe de ceste part. Pur ceo qe vous saviez le mal e vous procurastes de mettre en oevere, de ceo se pleint il.

Pass. Si vous veez qe cestui bref seit fundé suz ley, nous dirroms autre chose.

Ber. Cestui bref n'est pas fundé suz ley, einz est purveu de punir fausetés e maveités, le quel chescon de nous dust voler.

Ber. En le tens le Roi E., qe mort est, il avoit un bref issue hors de la Chancelerie au viconte de Northumberlond a somondre Isabel la Contesse de Aumar q'ele fut au prochein parlement a r[espondre] au Roi, e le bref voleit 'super sibi obiciendis etc.' La dame vint au parlement, e le Roi mesme s'asit au parlement. E pus par une justice ele fut arené de ben a xxx. articles. La dame par son seriant demanda jugement du bref, desicom le bref ne fut de nul certein article, e ele fut arené de diverse articles, jugement etc. E yl y aveint deux justices qe voleient agarder le bref bon. E dont dit Sire Rauf de Hengham al un dez justicez[2]: 'Volez vous faire cel agard icy com vous feistes a C. a la deliverance de la gaole: le recettur fut pendu e puis le principal fust acquité devant vous mesme.' E autre[3] issi dit il al autre justice: 'Devant vous a N. su[4] feistes pendre un home utlagé. Pur acounte les queux agars ne furent mie accordant a ley de terre. *Ber.* E le Roi après ceo de sa grante grace graunta sun heritage a sun heir.' *Ber.*[5] E puis Hengham dit: 'Ley veut qe nul ne seit suppris en la court le Roi; mès par vous la dame respoundreit en court d'autre chose qu'ele ne fut garny par bref. E pur ceo ele serra garny par bref des articles de quel ele serra arené; e ceo est ley de tere.'[6] E dont leva le Roi, qe fut mout sagis, e dit: 'Joe n'ay qe faire de vos disputesons, mès par le sanke dieu! vous moy durrez bon bref en[7] ke vous levez de illoqes.' Auxi di joe par

[1] *Corr.* par (?) [2] al . . . justicez *interl. Y.* [3] *Corr. om.* autre (?) [4] *Corr.* si (?) [5] There has been some displacement of clauses, which we endeavour to rectify in our translation. [6] *Ins.* Ber. Y. [7] *Corr.* einz.

and this judgment has been annulled and found to be a deceit [arising from] your false conspiracy.

Scrope. Then you can have a writ of deceit. Judgment of this writ.

Herle. The deceit was found and attainted; but [he complains] that you and the others forethought this malice, whereby he was aggrieved.

Bereford, C.J. If you are of my counsel, and I pray your counsel to set going some business, although the thing be bad in itself, still, if you do not know the evil, you will have no punishment for [giving] your counsel. So say I in this case. His complaint is that you knew the evil, and you procured its being taken in hand.

Passeley. If you hold that this writ is founded on law, we will say something else.

Bereford, C.J. This writ is not founded on law,[1] but is provided to punish falsehoods and wicked deeds, from which we all ought to fly.

Bereford, C.J. In the time of the late King Edward a writ issued from the Chancery to the sheriff of Northumberland to summon Isabel Countess of Albemarle to be at the next parliament to answer the King 'touching what should be objected against her.' The lady came to the parliament, and the King himself took his seat in the parliament. And then she was arraigned by a justice of full thirty articles. The lady, by her serjeant, prayed judgment of the writ, since the writ mentioned no certain article, and she was arraigned of divers articles. And there were two justices who were ready to uphold the writ. Then said Sir Ralph Hengham to one of them: 'Would you make such a judgment here as you made at the gaol delivery at C. when a receiver was hanged, and the principal [criminal] was afterwards acquitted before you yourself?' And to the other justice he said: 'A man outlawed was hanged before you at N., and afterwards the King of his great grace granted that man's heritage to his heir because such judgments were not according to the law of the land.'[2] And then Hengham said: 'The law wills that no one be taken by surprise in the King's court. But, if you had your way, this lady would answer in court for what she has not been warned to answer by writ. Therefore she shall be warned by writ of the articles of which she is to answer, and this is the law of the land.' Then arose the King, who was very wise, and said: 'I have nothing to do with your disputations, but, God's blood! you shall give me a good writ

[1] Meaning, we take it, that it is not given by the common law.

[2] A little rearrangement of the text has been necessary. See the opposite page.

de cea. Vous chalangez le bref pur ceste parole *procurarunt*, e ceo est un point de sa action par qei il bie dereigner [1] damages vers vous; e si cele parole ne fut, il moy semble qe son bref ne serreit garr[ant] a son counte etc. Par qei ditez autre chose etc.

Scrop. Nous emparleroms.

Ber. Alez, si emparlez tanqe a demein.

Lendemein W. de Goldygtone se profrit vers Jon de Basigburne.

Ber. Demandez Jon de B.

Fut demandé e ne vint nient.

Herle. Vous veez bien comment [2] Jon de B. issit d'enparler, e ore est departy en despit de la court; par qei nous priom jugement de lui com de noundefendu, e priom nos damages etc.

Ber. Nous veom bien vostre chalange; e tendez vos jugemenz a demain, e endementers nous parleroms de ceste matere a nos compaignouns.

Lendemein *Roger Brabazon* e ces compaignons vindrent en Commone Baunk, e *Herle* pria pur W. de G. son record e son jugement.

Scrop. Qel jugement volez vous avoir?

Herle. Nous demandoms etc.

Scrop. Tut fu ceo en play de tere, vous n'averiez qe le petit *cape*; ergo vous n'averez icy qe le grant destresce. (Et hoc confirmavit *Pass.*)

Herle. Vostre respounse tendereit lu s'il ne ust prié congé d'enparler e puis departir [3] en despit de la court.

Brabazon dixit in concilio: Si ceo fut en play de terre il recovreit seisine de terre par le despit meintenaunt saunz le petit *cape*; e mout plus fort en play de trespas.

Ridenal clericus dixit quod hec fuit oppinio omnium iusticiarorum de reddendo iudicium super principale pro non defenso suo etc.

Et postea concordati sunt pro ducentis libris etc.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 123, Ess.

John de Bassingburn and Fremund de Asherugge in mercy for divers defaults.

The same John and Fremund were attached to answer William de Goldington of a plea wherefore they together with Adam de Aungre, Nicholas de Eton, William le Botiller and John his brother, by (*de*) a conspiracy between them previously had (*prehabita*), fraudulently plotting

[1] de Reign' *Y.* [2] commet *Y.* [3] *Corr.* departi.

before you arise hence.' So say I here. You challenge this writ because of this word 'they procured,' and that is a point in his action, for the which he hopes to deraign damages against you, and, if that word were not in the writ, it seems to me that his writ would not warrant his count. So say something else.

Scrope. We will imparl.

Bereford, C.J. Go, then, and imparl until to-morrow.

On the morrow W. of Goldington proffered himself against John of Bassingbourne.

Bereford, C.J. Call John of Bassingbourne.

He was called, and came not.

Herle. You see how John went out to imparl, and now he has departed in despite of the Court. So we pray judgment against him as undefended, and we pray our damages etc.

Bereford, C.J. We take note of your challenge. Await your judgments until to-morrow, and meanwhile we will talk of this matter with our companions.

On the morrow Roger Brabazon, C.J.B.R. and his companions came into the Common Bench, and *Herle* for [the plaintiff] demanded his record and his judgment.

Scrope. What judgment would you have?

Herle. We demand [our damages].

Scrope. Even if this were in a plea of land, you would only have the petty *cape*; therefore here you will only have the grand distress. (*Passeley* confirmed this.)

Herle. Your answer would be in place if he had not prayed leave to imparl and afterwards departed in despite of the Court.

Brabazon, C.J.B.R., said in counsel:[1] If this were in a plea of land, he would at once recover seisin of the land without any petty *cape*, because of the despite; and *a multo fortiori* in a plea of trespass.

Ridenal, the clerk, said[2] that this was the opinion of all the justices—*i.e.* to give judgment on the main matter because of his non-defence etc.

Afterwards they made accord for two hundred pounds etc.

Note from the Record (*continued*).

(*machinantes*) to acquire the manor of Terling and Parva Badewe[3] for John de Bassingburn by the gift of Richard le Gras, falsely pretended (*confinxerunt*) that Ralph le Gras had made a recognisance to the said Richard

[1] That is, while the judges were consulting out of court.
[2] This seems to be information privately received. [3] Mod. Little Baddow.

Note from the Record (*continued*).

for one thousand three hundred pounds in 25 Edw. I. at Winchester before Adam de Northampton and John de Aune, deputed to receive there recognisances of debts according to the form of the statute issued for merchants, that so the said manors, then being in the hand of Ralph, might be bound in the said debt; and long afterwards by virtue of the recognisance, as if it were, whereas it was not, duly made, they purchased a writ in the name of Richard, he being utterly ignorant thereof, to the King's sheriff, returned before the said justices of the King on the morrow of the Purification in the year last past for taking the body of Ralph, long since dead, and detaining it in the King's prison until full satisfaction should be made for the said debt to Richard, and maliciously procured the said manors, which afterwards came to the hands of William de Goldington, to be adjudged by the award of the said Court to Richard, to hold by the form of the said statute until he should have levied the debt and to be detained from William de Goldington, until the said process was at his suit annulled before the justices in the same Court as erroneous and founded upon error; and [maliciously procured] the said William de Goldington by occasion thereof

28. BACON *v.* FRIARS PREACHER.[1]

Bref d'ael, ou le tenaunt demaunda jugement de bref pur ço qe les tenemenz furent devisables, qe les tenemenz furent en Kent.

Un Robert Bacoun porta bref d'ael vers le Priour de Frere Precheours de K. et demaunda un toft.

Denom. Nous entendoms mye qe a cestui bref devetz estre respondu, qar c'est un bref de possesioun, et les tenemenz sount en Kent, ou nul bref de possessioun court sy noun bref de novele disseisine, pur ceo qe les tenemenz sount divisableez. Jugement.

Hedon. Nous voloms averer qe nostre auncestre morust seisi etc.

Ber. Vous averietz autel resoun a dire q'il ne doit estre respondu pur ceo qe les tenemenz sount en Everwik etc.; et si pledent yl a la comune ley, et le bref de droit a la comune ley etc.

Denom. S'il fuist respondu a cel bref, ceo supposereit que l'auncestre morust seisi en son demene come de fee etc.; et issint puist le demaundaunt averrer les pointz de soun bref, s'yl doive a tiel bref estre respondu. Par quey a tiel bref etc. ore qe serroit a deffaire le devis, qar, neint countre esteaunt le devis, si morust l'auncestre seisi en soun demene come de fee.

[1] *Vulg.* p. 82. Text from *B*. For the version of this case given by *Y*, see Borough Customs (Seld. Soc.) i. 243.

Note from the Record (*continued*).

to be manywise fatigued with labours and expenses; and other enormous things to him did: to his damage of one thousand marks, and against the form of the ordinance by the common counsel of the King's realm in this case made etc.

And hereupon come William, and likewise John and Fremund. And John and Fremund pray a hearing of the writ; and, it having been heard, they say that the Court here holds plea upon this writ without warrant; for they say that the writ is not returnable here, for in the writ there is wanting the clause 'and have there the names of the pledges and this writ'; and thereof they pray judgment.

And because, the writ being inspected, it is found that the said clause is missing, let John and Fremund go thence without day etc.

The second of our two reports (ascribed to Hil. an. 5) seems to show that, a first writ having been abated as is here recorded, the plaintiff purchased a second writ which was not open to the same objection. The record of the second action we have not yet found.

28. BACON *v.* FRIARS PREACHER.[1]

Where tenements are devisable the ordinary ancestral actions are not necessarily excluded. In matters concerning the devise of land the temporal Court has jurisdiction.

One Robert Bacon brought a writ of ael against the Prior of the Friars Preacher of [Carlisle] and demanded a toft.

Denom. We do not think that you ought to be answered to this writ, for it is a possessory writ, and the tenements are in Kent [*corr.* Carlisle]; and no possessory writ runs there except the assize of novel disseisin, because the tenements are devisable. Judgment.

Hedon. We will aver that our ancestor died seised etc.

Bereford, C.J. You would have as good reason for saying that he ought not to be answered because the tenements are in York; but still they plead there according to the common law, and the writ of right [runs] there at the common law.

Denom. If he were answered to this writ that would suppose that the ancestor died seised in his demesne as of fee, and thus the demandant might aver the points of his writ if he were answered to such a writ. Thus a devise would be defeated,[2] for, notwithstanding the devise, the ancestor does die seised in his demesne as of fee.

[1] Proper names from the record. [2] The text requires some little amendment.

Scrop. La nature de devis content en soy condicioun: c'est assavoir sil devie, qe le devis estoise et les chosez divisez soient etc. a ceux a qi il sount divisez; et s'il vyve, qe les choses lui demoergent.

Herle ad idem. S'il voillent dire qe les tenemenz furent divisez, sy n'averetz pas pouer a trier, qar ceo doit estre trié par testament, de quey vous ne poietz avoir conisaunce.

Stanton. Ne fuist le Roy r[espond]u a soun bref d'eschete des tenemenz qe furent a Piers de Peccham en Loundres?

Herle. Au bref d'entré et de droit doyvent il r[espoundre].

Ber. Sy les tenemenz furent diviseez, dites cel, a qi diviseez, et par qi, qar cel chose puist homme enquere ceinz. Par quei responez outre.

Denom. Soun auncestre ne morust nyent seisi. Prest etc.

Et dictum fuit q'il covendroit dire divisables et divisez et a qi. Et ceo puist homme enquere et traverser et serra r[espondu], saunz ren trier qe touche testament etc.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 151, Cumb.

Robert Bacun, by his attorney, demands against the Prior of the Order of Friars Preacher of Carlisle a toft in Carlisle whereof Alexander Bacun, his grandfather, whose heir he is, was seised in his demesne as of fee in time of peace, in the time of Henry III., taking esplees etc. to the value etc.; and from Alexander the fee [descended] to one Robert as son

29. ROYS *v.* HULME (ABBOT OF).[1]

Ne vexes, ou le defendaunt dit q'il fust son vilein, par quei il ne doit estre respondu; fraunc, prest etc.: et alii econtra.

Un homme porta le *ne vexes* etc.

Herle. Yl ne doit estre respondu, qar il est nostre vylein et nous seisi etc.

Scrop. Le quel voilletz vous dire, huy ceo jour seisi ou jour del bref purchasé?

Herle. A ceo n'avoms mester a respoundre, qe sy mon vilein eit purchasé bref sour moy, par tant n'est il mye enfraunchi.

[1] *Vulg.* p. 80. Text from *B.*

Scrope. The nature of a devise has a condition in it: to wit, if [the testator] dies, the devise is to stand and the things devised are to belong to the devisees; and if [the testator] lives, those things are to remain his.

Herle on the same side. If they wish to say that the tenements were devised, you [justices] would have no power to try that, for it must be tried by the testament, of which you cannot have cognisance.

Stanton, J. Was not the King answered on his writ of escheat for the tenements in London which belonged to Peter of Peckham?[1]

Herle. To a writ of entry or of right they would have to answer.

Bereford, C.J. If the tenements were devised, say so, and to whom and by whom devised, for that is a matter which may be inquired of here. So plead over.

Denom. [The plaintiff's] ancestor did not die seised. Ready etc.

And it was said that one ought to say 'devisable and devised' and to whom. And about this there may be traverse and inquest [in this Court,] without any assumption of testamentary jurisdiction.

Note from the Record (*continued*).

and heir, and from that Robert to this Robert, the now demandant, as son and heir.

The Prior, by his attorney, after formal defence, says that Alexander the grandfather did not die seised of the toft in his demesne as of fee, as Robert by his writ supposes; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the morrow of Martinmas.

29. ROYS *v.* HULME (ABBOT OF).[2]

Semble that a defendant, excepting to the plaintiff on the ground of villeinage, may say 'seised of him,' without adding 'on the day of plea pleaded' or 'on the day of writ purchased.'

A man brought the *ne vexes* etc.

Herle. He ought not to be answered, for he is our villein and we are seised [of him.]

Scrope. Which do you mean? Seised now or on the day of writ purchased?

Herle. We need not answer that, for if my villein purchases a writ against me, that does not enfranchise him.

[1] This refers to a recent case in the King's Bench. See Plac. Abbrev. p. 310.

[2] Proper names from the record.

Scrop. Il vous covent dire huy ceo jour seisi ou jour del bref purchasé, qe autrement ne covendra ja porter bref de niefté etc.

Herle. Nous serroms de meillour condicioun a lui reboter qe a demander par voie d'actioun, qe nostre futife ne purroms rebouter par excepcioun de villenage? Par quey nous voloms averrer qe nous sumes seisi de lui et de ses auncestres come de etc.

Scrop. Fraunc[1] etc. Prest etc.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 111, Norf.

The Abbot of St. Benet of Hulme was summoned to answer John Roys of Northwalsham of a plea that unjustly he vex not nor permit to be vexed the same John concerning (*de*) his free tenement which he holds of the Abbot in Northwalsham, and that he exact not nor permit to be exacted customs or other services which he [John] ought not nor is wont to do therefor etc. John, by William Moigne his attorney, complains that, whereas he holds of the Abbot a messuage and three roods of land in the vill of Northwalsham by fealty and the service of three pence a year for all service, the Abbot, beyond that service, unjustly vexes him by exacting from him homage and the service of doing suit to the Abbot's court of Northwalsham: damages, twenty pounds.

The Abbot, by John le Warde his attorney, after formal defence, says

30A. BURNHILL *v.* RINGTHEROSE.[2]

Sewte de molyn, ou la weue fust demaundé et nient graunté, et puis etc.

Aleyn Bournel porta soun bref de sute de molin vers J. de R., et counta qe a tort ne lui fait suite a soun molyn en A., come fere doit et soleit, des blees cressauntz en x. acres de terre; et pour ceo a tort, q'il fuist seisi etc. a moudre toute manere des bleez cressauntz etc. nomement fourment et segle etc. al x. vessel, et dount yl mesmes fuist seisi, et les esplés prist, come en mouture etc. jesqe a ore a iij. aunz q'il luy ad sustret a tort et a ses damages.

Fr. deffent etc. et demaunda la veuwe.

Herle. C'est de vostre tort demene. Jugement.

Fr. Nous demaundoms la veuwe de la terre et del molyn dount vous demaundetz la moulture, qar c'est un bref de droit, et puist estre q'il y ount diverses molyns en mesme la ville et qe nous avoms

[1] *But like* frauctenement *in compendio, B.* [2] *Vulg.* p. 81. Text of this first version from *B.*

Scrope. You must say that you are seised to-day or that you were seised on the day of writ purchased. Otherwise there never would be occasion to bring a writ of naifty.

Herle. Our position is better when we are rebutting him than if we were demandants in an action, for shall we not rebut our fugitive by a plea of villeinage?[1] So we will aver that we are seised of him and of his ancestors as of [our villeins.]

Scrope. Free [man and of free estate.] Ready etc.

Note from the Record (*continued*).

that he ought not to answer him thereof to this writ, for he says that John is his villein and that he is seised of him as of his villein; for he says that he and all his predecessors from time immemorial were seised of John and all his ancestors as of their villeins; and this he is ready to aver; and thereof he prays judgment.

John says that he is a free man and of free condition, and that he and all his ancestors always in past time were free, without this (*absque hoc*) that the Abbot or his predecessors were seised of them as of their villeins, as the Abbot says; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the morrow of All Souls.

30A. BURNHILL *v.* RINGTHEROSE.[2]

Action for suit of mill. View refused as seisin by the hands of the tenant in the action is alleged.

Alan Burnhill brought his writ for suit of mill against J. of R., and counted that wrongfully he does not to him suit to his mill of A., as he ought and was wont to do, for corn growing on ten acres of land: and wrongfully, for [the demandant] was seised of grinding all manner of corn growing, and in particular wheat and rye, at the rate of one dish in ten, and thereof he himself was seised and took the esplees, as in multure etc., until three years ago when [the defendant] withdrew his suit, to his damage.

Friskeney defended and demanded a view.

Herle. It is your own tort. Judgment.

Friskeney. We demand a view of the land and the mill whereof you demand the multure; for this is a writ of right, and perhaps you have divers mills in the same vill and we have divers lands. Besides,

[1] The note of interrogation is the editor's. [2] Proper names from the record.

diverses terres etc. D'autrepart, en bref d'amesurement de pasture homme avera la veuwe, et unqore est ceo de soun tort demene.

Herle. Ceo n'est mye semblable, qar en bref d'amesurement yl y ad touz ditz un issue, mès en cestui bref il pount estre diverses issues, scil. de sa seisine demene ou de la seisine soun auncestre.

Berr. Vous ne poietz mye allegger nountenure ne vous voucheret point. Par quey vous n'averetz mye la veuwe.

Fr. deffendy tort etc. et le droit et les damages etc. Et la ou il dit q'il fuist seisi en soun demene come de fee et de droit, nous dyoms qe unqes seisi come de fee et de droit. Prest etc.

Berr. Moudre bleez cressauntz en ascune terre a certeyn molyn d'ascuny n'est mye de comune ley, einz solome usage de pais.

Herle. Il vous covent dire coment dounqe seisi.

Fr. ut prius. Outre vous dyoms qe unqes siwite a vostre molyn ne femes, si noun a nostre volunté demene. Prest etc.

Et alii econtra.

30B. BURNHILL *v.* RINGTHEROSE.[1]

Ceo vous mostre W., qe cy est, qe C., qe illoqes est, atort ne lui fet suite a son molin de N. a moudre touz ses bleez cressaunz en ix. acres de terre en N., scil. orge e avoine a xx. vesel, sicom fere deit soleit; e pur ceo atort qe ceo est son droit, e dont il mesme fut seisi etc., les esplez etc., jeske ore a iij. aunz devant cestui bref purchacé qe il ad sutret a tort e a damages etc.

Fris. defend tort e force e le droit e les damages etc. E demanda le vewe des tenemenz, qar put estre qe nous avoms autres tenemenz en mesme la ville e autres molins sont etc.

J. Denham. Ceo est[2] vostre tort demeine, par quoi vous ne devez la vewe avoir.

Frik. En un bref de amesurement de pasture, tot coment il eu le tort, homme avera la vewe.

Herle. Ceo n'est pas semblable.

Ber. En bref de amesurement de pasture homme vouchera a

[1] Text of this second version from Y (f. 220d). [2] *Om.* est Y.

in a writ of admeasurement of pasture one can have a view, though there the defendant is charged with his own tort.[1]

Herle. That is not a similar case, for in that writ there is always one and the same issue, but in this writ there may be issue on [the plaintiff's] own seisin or on that of his ancestor.[2]

Bereford, C.J. You cannot allege nontenure and you cannot vouch. So you cannot have a view.

Friskeney defended tort etc. and the damages etc. And (said he) whereas he alleges seisin in his demesne as of fee and of right, we say that he never was seised as of fee and of right. Ready etc.

Bereford, C.J. [The duty] to grind corn grown on certain lands at somebody's mill is not [imposed by] common law, but follows the usage of the country.

Herle. Then[3] you must say how we were seised.

Friskeney repeated what he had said and added: We never did suit at your mill except of our free will.[4] Ready etc.

Issue joined.

30b. BURNHILL *v.* RINGTHEROSE.

Showeth to you W., who is here, that C., who is there, wrongfully does him not suit to his mill of N. to grind all his corn growing on nine acres of land in N., to wit barley and oats [and rendering] the twentieth vessel, as he ought and was wont to do: and wrongfully because this is his right, whereof himself was seised, taking esplees etc., until three years before this writ purchased when he subtracted [his suit], wrongfully and to the damage etc.

Friskeney defended tort and force and the right and the damages etc. And he demanded a view of the tenements, for it may be that we have other tenements in the same vill, and there are other mills etc.

J. Denom. It is your own tort, so you ought not to have the view.

Friskeney. In a writ of admeasurement of pasture, although [the tenant be charged with the] tort, he shall have the view.

Herle. Not a similar case.

Bereford, C.J. In a writ of admeasurement of pasture one may

[1] For a recent case see vol. i. p. 25.

[2] Can this be a reason for refusing a view?

[3] Replying to Friskeney, not to Bereford.

[4] But see our note from the record.

garrant ; mès en ceo bref ne git nul garrant voucher ; par quoi dites autre chose.

Frisq. defendit tort e force e le droit W. e ses damages de xl. livres, e q'il ne fut unqes seisi de cele suite com de son droit, prest etc.

Et alii contrarium.

Note from the Record.

De Banco Roll, Trinity, 3 Edw. II. (No. 182), r. 133, Lanc.

Thomas Ryngetherose and Emma his wife were summoned to answer Alan de Burnhulle of a plea that they do to his mill in Assheton the suit which they ought and are wont (*debent et ſolent*) to do. Alan, by his attorney, says that whereas Thomas and Emma ought to do suit to his said mill, to grind all manner of corn growing on sixteen acres of land of theirs in the said vill at [the rate of] the twentieth vessel, and of this suit Alan was seised by the hand of Thomas and Emma as of fee and right in time of peace, in the time of King Edward [I.], taking esplees to the value etc. until

vouch to warrant; but in this writ no voucher to warrant lies. So say something else.

Friskeney defended tort and force and the right of W. and his damages of forty pounds. And that he never was seised of this suit as of his right, ready etc.

Issue joined.

Note from the Record (*continued*).

three years ago, Thomas and Emma have withdrawn themselves etc.: damages, a hundred shillings.

Thomas and Emma, by their attorney, after formal defence, deny that Alan was seised of the said suit by their hands as of fee and of right as to any corn growing on the said tenements as Alan says; and thereof they put themselves upon the country.

Issue is joined, and a *venire facias* is awarded for the morrow of Martinmas.

CONCORDANCE OF THIS EDITION WITH THE OLD EDITION.

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60	Nota si aliqua loquela	[vol. ii. 181]
60	Deux Perceiners porterent	[vol. ii. 168]
61	Le Priour de Seint Oswold	37
61	Un Will' porta son Repl'	[vol. ii. 174]
62	Johan de Ferreis . .	5
62	Une feme porta breve Dintrusioun . . .	38
63	Un home port son breve de droit de Garde . .	22
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64	Un Katherine port son Repl' . .	[vol. ii. 182]
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[1] The old edition and the manuscript (our *B*) from which it was taken place the Hilary and Easter cases of this year under the Hilary heading. There is no new rubric until the Trinity term begins.

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15. Ferrers *v.* Vescy 1

Discussion of the effect of a reversionary grant in fee tail made by a tenant in tail. *A.* is tenant in tail with reversion to *X.* *A.* assigns dower to a woman (*B.*), and then professes to grant the reversion expectant on *B.*'s death to *C.* in fee tail, and *B* attorns to *C.* *A.* dies without issue. Then *X.* brings formedon in the reverter against *B.*, who makes default. Is *C.* entitled to be received? Would there in such a case be any reversion (by wrong) in *C.* after *A.*'s death.

16. Wokeseye *v.* Chiselden . . 10

In a writ of entry on alienation by a doweress, the tenant, admitting the entry, is allowed to aver that before the alienation the reversion had been conveyed to a third person, though no specialty is produced.

17. Fressingfeld *v.* Cookley (Parson of) 12

Debate touching the patronage of vicarages and the cases in which a parson can pray aid of patron and ordinary.

18. Devereux *v.* Tuchet . . . 16

The Statute of Gloucester, which gives an action to the reversioner when tenant in dower alienates in fee, does not sanction a similar writ for the remainderman on an alienation in fee by tenant for life. A writ mentioning that Statute is brought by the infant heir of a remainderman. After a decision that the parole is not to demur for his nonage, the writ is quashed as not warranted by common law or statute.

19. Anon. 20

If other distress can be found, corn in shocks is not to be taken for services arrear. The distrainor sues the tenant for retaking things taken by way of distress.

20. Heyling *v.* Rabeyn . . . 21

On a grant of a wardship by *A.* to *B.*, the deed contains a clause of warranty not mentioning executors on either side. The executors of *B.* are not entitled to warranty from the executors of *A.* In such a case an attempted voucher may be counterpleaded by the demandant. In a writ of right of ward against the executors of *B.*, they may plead priority of feoffment, and the demandant must answer them. *Semble* they are not entitled to pray aid of the heir of *A.*, at all events if he is in ward to the King.

21. Canterbury (Archbishop of) *v.* Percy 26

(1) Although a vill is not (like a manor, carucate or acre) one of those proprietary units that can be demanded by action, *semble* that an avowry may be good though it alleges the tenancy to be of four vills. (2) An allegation of seisin of escuage with an allegation of tenure by knight's service will support an avowry for homage and fealty. (3) The connexion between avowry and disclaimer discussed. (4) The amendment of an avowry by the advice of the Court without judgment exemplified.

22. St. Oswald (Prior of) *v.* Friars Preacher 37

In a *cessavit* against the head of a religious house, a view will not be

granted where the alleged cesser is committed by the tenant himself, not by his predecessor.

23. Anon. **38**

Darein presentment: writ to the bishop when he has collated after lapse.

24. Rothyngge *v.* Mukelfeld . . **38**

To a writ of intrusion the tenant pleads a grant of the reversion with warranty by the demandant's ancestor and with attornment of the particular tenant. A reply traversing the attornment is sufficient.

25. Anon. **39**

A *scire facias* is not the proper remedy for the recovery of arrears of rent service due under a fine.

26. Chesterton (Parson of) *v.* Huntingdon (Prior of) . . . **40**

In trespass for taking corn the defendant justifies on the ground that the corn was his severed tithe. The defendant has to reply to the alleged cause of justification.

27. Anon. **42**

In a writ of entry the view is denied to a tenant on the ground that he had it in a previous writ of entry; and this, although the former writ was in the *per* and *cui* and this is in the *post*.

28. Trumpeton *v.* Bueles . . . **43**

Avowry upon a third person. His existence denied.

29. Gloucester (Prior of) *v.* Grauntson. **44**

Where the demanded tenements are in divers vills, a view is granted to the tenant in a writ *de quibus*, which charges the tenant with a disseisin, he having pleaded that one of the vills is in the ancient demesne.

30. Anon. **45**

Assize. Default. Venue. Witnesses to deed.

31. Beneyt *v.* Lodewyk . . . **46**

Semble that in an action of debt law cannot be waged against a sealed tally; but an averment that nothing is due is admissible.

32. Anon. **48**

Judgment by default on the return of the petty *cape* though the tenant appears and desires to plead.

33. Nostell (Prior of) *v.* Pasey . . **49**

Final judgment by default after mise in writ of right.

34. Anon. **49**

Action by infant. Demurrer of the parole.

35. Seriaunt *v.* Banyngham . . **50**

A deed limiting an estate to *A.* for life says that after his death the tenement is to 'descend' to *B.* *Semble* that this gives *B.* nothing. *Qu.* whether when a writ of entry 'within the degrees' is brought against a tenant who makes default, the Court will receive as reversioner a person who is not named in the writ nor is the heir of anyone there named and who admits none of the facts stated in the 'degrees.'

EASTER, 3 EDWARD II.

1. Bernake *v.* Montalt . . . **58**

Semble that in *quare impedit* a purchaser from the heir is allowed to take his title in a presentation made by the doweress. Discussion of the cases in which the impedient in *quare impedit* can obtain a writ to the bishop without showing any title in himself.

2. Tichmarsh *v.* Stanwick . . **63**

In an *ad terminum qui praeteriit* the demandant produces a lease by deed made to the ancestor of the tenant. The tenant may plead that his ancestor had nothing by the lease without first confessing or denying the deed.

3. Helle *v.* Ipswich (Prior of) . . **65**

A joint alienation is made by two parceners. After the death of one, the other tries to recover the whole by a *dum fuit infra aetatem* as having been under age. The pleas open to the tenant discussed.

4. Middelton *v.* Vavassur . . 67

Debt against husband and wife for money lent to them. The husband alone makes law for both.

5. Le Keu *v.* Le Keu . . . 68

On marriage son endows wife with the assent of father out of land held by father and mother in right of mother. After son's death wife has no action for dower against father and mother, but perhaps can sue father alone and obtain dower for his life.

6. Cope *v.* Cole 69

A claimant of dower is met by a fine to which she was party tending to show that she and her husband were joint tenants. This is tantamount to 'Never so seised etc.'

7. Toftes *v.* Thorpe 71

A fine of a manor *sur conusance de droit com ceo etc.* with clause of warranty does not without attornment vest in the conusee the right of the services of a free tenant of the manor. The heir of the conusor avows upon such a tenant and is encountered by the fine. He may aver that the conusee never obtained seisin by attornment.

8. Gravesend *v.* Chaumbre . . 75

The Statute 34 Edw. I., which gives an averment of sole tenancy in reply to a plea of joint tenancy, does not extend to an action of waste in which the demandant is privy to the deed that has been produced.

9. Pypard *v.* Clerk 77

Qu. whether in a writ of entry *sur* disseisin it is necessary to name a vill, or whether the name of a hamlet will suffice. When a writ against *A.* for land in *X.* has been abated by a plea of joint tenancy by *A.* and *B.*, *qu.* whether to another writ for the same land against *A.* and *B.* the objection that *X.* is not a vill can be taken.

10. Gaunt *v.* Gaunt . . . 78

When a tenant for life vouches, *qu.* whether the vouchee can refuse to warrant on the ground that the voucher was 'simple,' *i.e.* did not mention that there was only a life estate to be warranted. *Held* that such a simple voucher was at all events not a fatal error in a case in which the demandant had recovered owing to the vouchee's infancy, and the warranted land had come to the vouchee after the demandant's death.

11. Starley *v.* Threlkeld . . . 81

Replevin by *A.* against *X.* Avowry upon *M.* *A.* prays aid of *M.* on the ground that *A.* holds for years of *M.* Aid is refused; but *A.* is admitted to plead 'outside his fee.' Can there be an avowry for suit to a mill?

12. Drayton *v.* Rothenhale . . 83

Seisin of an advowson cannot be transferred by a fine. *A.*, who made the last presentation to a church, enfeoffed his son *B.* of Whiteacre together with the advowson. He then enfeoffed *X.* of Blackacre together with the same advowson, and made conusance of these tenements to *X.* by fine with warranty. The church falls vacant; *A.* is dead; *C.*, who is heir of *B.* and *A.*, is seised of Whiteacre. *Semble* that *C.* has better right than *X.* to present. In a *quare impedit* brought by *X.* or his heir, the fine and warranty do not estop *B.* from pleading the earlier enfeoffment.

13. Burnel *v.* Beauchamp . . 89

One of two executors of the grantee of a wardship, if personally charged with waste by the heir, must answer although his coexcutor is not joined. The heir of one of the tenants in chief of the King can bring an action for waste against the grantee of the wardship, notwithstanding Mag. Cart. c. 4.

14. Box *v.* Palmer 91

In abatement of the writ of account given by Stat. Marlb. c. 23 the defendant may plead that he has land and tenements by which he may be distrained to render an account. New statutory writs are not to be extended beyond the statutory cases.

15. Thorne *v.* Peche . . . 93

A. brings a mortdancestor against a woman (*B.*) who holds in dower a manor of which the land is parcel, and he recovers after verdict. Subsequently he is ejected by (*C.*) the grandson of *B.*,

the manor having descended to *C.* from *B.*'s husband. In an assize of novel disseisin the recovery against *B.* will not bar *C.* from pleading that *A.* is *C.*'s villein and that *C.* is seised of *A.*

16. Englefield *v.* Oxford (Earl of) . 95

To an avowry by *X.* as guardian it is a good reply that the plaintiff holds of *X.* himself.

17. Cornwall *v.* Haccumbe . . 97

In a writ of right of ward the tenant vouches. The voucher is opposed because the tenant (1) has only a chattel and (2) was the first to abate. But the vouchee is received to warrant gratis.

18. Haye *v.* Gynes 99

Use in writs of the words 'half' and 'moiety.'

19. Anon. 100

An action of waste lies against the lessee of a wardship, though he may thus be exposed to two actions.

20. Bardenay *v.* Danby . . . 101

The heir apparent in tail has no right that he can release.

21. Anon. 102

Avowry by a commoner upon a stranger.

22. Choch *v.* Estdene . . . 103

A tenant by statute merchant may be made tenant in an action of dower. He can vouch the creditor, and therefore cannot pray aid of him.

23. Anon. 104

Formedon in the descender. Demurrer of the parole.

24. Anon. 104

For a trespass a man cannot as a general rule be imprisoned if in the meantime the King has died.

25. Copper *v.* Gederings . . . 105

The heir shall not have *cessavit* for a cesser in the time of his ancestor.

26. Anon. 106

Voluntary attornment upon a fine.

27. Stirkeland *v.* Brunolfshead . . 106

When tenant for life or tenant by the curtesy alienates in fee, the reversioner may at once have a writ to recover the land; but it must not purport to be founded on the Statute of Gloucester. Formation of the writ *in consimili casu.*

28. Anon. 109

Nontenure. Recovery after writ purchased.

29. Livermere *v.* Thorpe . . . 110

Nuper obiit. Denial of the existence of a person through whom pedigree is traced.

30. Gouteby *v.* Latimer . . . 111

Replevin. Avowry upon stranger (*X.*) for services arrear. Plea: the plaintiff's common. Replication: not his common, but *X.*'s arable. A custom of making intakes discussed.

31. Gentylcors *v.* Brown . . . 113

Executors need not produce the will when they bring trespass for goods taken from their own possession.

32. Lancaster *v.* Stratford (Abbot of) . 114

A man is seised of presenting to the parsonage and also separately to the vicarage. By fine he conveys 'the advowson of the church.' *Qu.* whether he still is patron of the vicarage.

33. Blakeman *v.* Stonhuse . . 116

Procedure when one of several tenants in an action desires to cure his default and to defend the whole, the others making a second default.

34. Anon. 118

Duplicity. Plea to writ and plea to action.

35. Anon. 119

If by writ of mesne acquittance of suit to a hundred court can be demanded at all, this can only be where the defendant is mesne between plaintiff and distrainor.

36. Anon. 121

Qu. whether the right to avoid certain collusive assurances given to the guardian by Stat. Marlb. c. 6 extends to

a freehold lease, and whether this right gives the guardian a good plea when the lessor's infant heir is vouched to warrant the lessee against the lessor's doweress.

37. **Halstede** *v.* **Huraund** . . . 122

A demand amended.

38. **Anon.** 123

In an action of detinue of charters the defendant is excluded from his law. Issued is joined on the bailment, not on the detinue.

39. **Anon.** 124

In a writ of entry *cui in vita* in the *post* a first vouchee vouches an infant. *Qu.* the effect of Stat. Westm. II. c. 40.

40. **Anon.** 125

Variance between original writ and writ of resummons.

41. **Anon.** 126

Services granted by fine; necessity for attornment.

42. **Ryvere** *v.* **Frere** 126

A writ of account is abatable unless brought in the county in which the defendant is said to have been receiver or bailiff.

43. **Bygot** *v.* **Belet** 128

Husband and wife take Blackacre from *X.* in exchange for Whiteacre, which was held in the wife's right. *Qu.* whether, in an action by the wife's heir for Whiteacre, the exchange can be pleaded by *Y.*, an assign of *X.*, unless he can show specialty both for the assignment and for the exchange. *Semble* that no specialty is needed.

44. **Anon.** 131

In formedon the parole will demur until the full age of the demandant unless the person on whose seisin the count is founded died seised.

45. **Baret** *v.* **Sparewe** 134

Attachment for suing in Court Christian against prohibition. The defendant must answer though the plaintiff's excommunication is proved, it being alleged that the excommunication was at the defendant's suit.

46. **Multon** *v.* **Burton** 135

Qu. whether a lord can 'approve' common without enclosing it. In opposition to a grant of common in gross an ineffectual attempt is made to assert a prescriptive right of approving.

47. **Anon.** 137

An annuity deed is upheld, though it contains words purporting to charge the 'chambers' of the grantor's heirs. Action for an annuity upheld against an heir for arrears incurred in his ancestor's time.

48. **Botiller** *v.* **Vivonia** 139

Charged with waste in *S.*, a guardian produces a release for waste in *H.* and pleads that, except in *H.*, he held nothing in wardship.

49. **Rasen** *v.* **Furnival** 140

A question concerning the merger of an estate tail owing to the descent of the reversion in fee simple to the tenant in tail is raised and discussed; but ultimately the gift in tail is denied. *Qu.* whether in counting in formedon it is correc to deduce title through one who did not live to attain an estate.

TRINITY, 3 EDWARD II.

1. **Preston** *v.* **Simonson** 146

An intervener prays receipt on the ground that the tenant, who is making default, is tenant for life by the intervener's lease. It is not a good answer to say: 'You had nothing in the reversion on the day of writ purchased.

2. **Nasshe** *v.* **Northaw** 147

In a writ of entry by the disseisee's heir against the disseisor's heir a plea of feoffment with warranty by the supposed disseisee to the supposed disseisor would apparently be bad as tantamount to th general issue. But a release with

warranty in the disseisor's seisin can be pleaded and must be confessed or denied.

3. Mareschal *v.* Foliot . . . 150

Husband and wife can bring a writ for waste done 'in their inheritance' against a doweress, though the reversion was conveyed to them and the heirs of the husband. A reversioner, by entering into warranty on the voucher of a doweress, does not so far become tenant that he cannot sue the doweress for waste.

4. Canterbury (Archbishop of) *v.* Dyer. 153

In a writ of escheat alleging that *X.* committed felony and was hanged, it is needless to specify the felony. 'Acquitted of a certain felony and never arraigned of any other' is not a good plea. *Per* Bereford, C.J.: A man who has not his charter of pardon at hand may be tried and hanged, though at a former trial he went quit because of the charter.

5. Anon. 156

As a bar to an assize of novel disseisin, the defendant is allowed to plead his entry as son and heir of one *X.*, without confessing in the plaintiff any seisin, but allowing him some colour of right as a cousin of *X.*

6. Anon. 157

In an assize of novel disseisin the defendant pleads a feoffment without charter, and this is found by verdict.

7. Anon. 157

A prior's predecessor is not an ancestor within the meaning of Stat. Westm. I. c. 40. When in a mort-dancestor a voucher is counterpleaded and the assize is taken in form of a jury and finds for the tenant, the judgment is that the voucher stand and the plaintiff be amerced.

8. Anon. 158

The process when an issue of bastardy is sent to the Court Christian illustrated. Abatement of an action by the death of one of the demandants. A woman cannot be essoined for the King's service.

9. Attecrouch *v.* Frost . . . 159

In tracing a pedigree in a possessory action, such as entry *dum fuit infra aetatem*, it is not a fatal error to omit a person who stood in the line of descent, provided that he never was seised or did anything that would bar the demandant.

10. Vescy *v.* Ittunessone . . . 162

In *cui in vita* the demandant is encountered by her own charter of feoffment with warranty. Notwithstanding the charter, she can aver that the tenant had entry by her husband.

11. Anon. 163

In answer to a writ of intrusion the tenant, alleging a gift in tail to his father by the grandfather of the demandant, relies on a deed of confirmation with warranty by the father of the demandant. To this deed the demandant has to answer.

12. Anon. 164

A quitclaim produced after inquest joined.

13. Hartland (Abbot of) *v.* Beaupel . 164

The scope of the action of mesne considered. *Semble* that, although *A.* does not hold of *B.*, an action of mesne will lie for *A.* against *B.* if by a charter *B.* has confirmed *A.*'s estate in terms that imply that *A.* is to hold of *B.* and that *B.* is to warrant and acquit *A.*

14. Rokesley *v.* Gascelyn . . 174

Qu. whether against a fine the heir of a party can aver continuous seisin if in the fine his ancestor was a purely passive party.

15. Mortimer *v.* Ludlow . . . 180

Another version of *Mortimer* v. *Ludlow*, reported in vol. i. page 43.

16. Anon. 182

If pending a writ of entry judgment in a writ of dower is recovered against the tenant, the writ of entry can be abated, but the demandant will not be amerced.

17. Catesby (Prioress of) *v.* Blaston . 182

An action for waste can be brought against one of several joint lessees.

18. Horbling *v.* Aunsel . . . 184

By demanding a view of the tenements the tenant waives pleas to the

form of the writ. An averment that the tenements in demand are not comprised in a fine is allowed. Use in writs of 'half' and 'moiety.'

19. Anon. **185**

Action of mesne against tenant by the curtesy.

20. Pateshull *v.* **Bray** . . . **185**

A father (*A.*) enfeoffs his infant son (*B.*) and delivers the land to *C.* to be kept for the infant. *A.* dies, leaving *B.* his heir. If *C.* commits waste, the writ of waste against a guardian will not lie against him. *Qu.* Whether a writ of account will lie.

21. Anon. **186**

An infant who is entitled as tenant in tail (or who is heir apparent in tail) is enfeoffed in fee simple by his father, who is tenant by the curtesy (or tenant in tail). If a mortdancestor is brought against him, the parole will demur, for he may elect to rely upon inheritance.

22. Anon. **188**

Imprisonment of a vouchee as a cause for deferring an assize of mortdancestor. Contrast between imprisonment for felony and imprisonment of an excommunicate.

23. Anon. **188**

After judgment in an action of annuity, the plaintiff grants a release to the defendant, but then sues execution. Procedure in such a case.

24. Batecoke *v.* **Coulyng** . . . **189**

The Cornish acre. The age at which dower can be earned.

25. Loveday *v.* **Ormesby** . . . **191**

A 'grant' that one is bound to pay a sum of money cannot be sued upon unless it is proved by specialty.

26. Englefield *v.* **Oxford (Earl of)** . **192**

The rightful claimant of a wardship may eject another claimant, at least while the abatement is fresh.

27. Goldington *v.* **Bassingburn** . . **193**

The scope of the statutory action of conspiracy discussed. Writ quashed for a formal defect.

28. Bacon *v.* **Friars Preacher** . . **198**

Where tenements are devisable the ordinary ancestral actions are not necessarily excluded. In matters concerning the devise of land the temporal court has jurisdiction. It is erroneously alleged that tenements in Kent are devisable.

29. Roys *v.* **Hulme (Abbot of)** . . **199**

Semble that a defendant, excepting to the plaintiff on the ground of villeinage, may say 'seised of him,' without adding 'on the day of plea pleaded,' or 'on the day of writ purchased.'

30. Burnhill *v.* **Ringtherose** . . **200**

Action for suit of mill. View refused as seisin by the hands of the tenant in the action is alleged.

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RULES.

1. The Society shall be called the Selden Society.

2. The object of the Society shall be to encourage the study and advance the knowledge of the history of English Law, especially by the publication of original documents and the reprinting or editing of works of sufficient rarity or importance.

3. Membership of the Society shall be constituted by payment of the annual subscription, or, in the case of life members, of the composition. Form of application is given at the foot.

4. The annual subscription shall be £1. 1*s*., payable in advance on or before the 1st of January in every year. A composition of £21 shall constitute life membership from the date of the composition, and, in the case of Libraries, Societies and corporate bodies, membership for 30 years.

5. The management of the affairs and funds of the Society shall be vested in a President, two Vice-Presidents, and a Council consisting of fifteen members, in addition to the *ex officio* members. The President, the two Vice-Presidents, the Literary Director, the Secretary, and the Hon. Treasurer shall be *ex officio* members. Three shall form a quorum.

6. The President, Vice-Presidents, and Members of the Council shall be elected for three years. At every Annual General Meeting such one of the President and Vice-Presidents as has, and such five members of the Council as have served longest without re-election, shall retire.

7. The five vacancies in the Council shall be filled up at the Annual General Meeting in the following manner: (*a*) Any two Members of the Society may nominate for election any other member by a writing signed by them and the nominated member, and sent to the Hon. Secretary on or before the 14th of February. (*b*) Not less than fourteen days before the Annual General Meeting the Council shall nominate for election five members of the Society. (*c*) No person shall be eligible for election on the Council unless nominated under this Rule. (*d*) Any candidate may withdraw. (*e*) The names of the persons nominated shall be printed in the notice convening the Annual General Meeting. (*f*) If the persons nominated, and whose nomination shall not have been withdrawn, are not more than five, they shall at the Annual General Meeting be declared to have been elected. (*g*) If the persons nominated, and whose nomination shall not have been withdrawn, shall be more than five, an election shall take place by ballot as follows: every member of the Society present at the Meeting shall be entitled to vote by writing the names of not more than five of the candidates on a piece of paper and delivering it to the

Hon. Secretary or his Deputy, at such meeting, and the five candidates who shall have a majority of votes shall be declared elected. In case of equality the Chairman of the Meeting shall have a second or casting vote. The vacancy in the office of President or Vice-President shall be filled in the same manner (*mutatis mutandis*).

8. The Council may fill casual vacancies in the Council or in the offices of President and Vice-President. Persons so appointed shall hold office so long as those in whose place they shall be appointed would have held office. The Council shall also have power to appoint Honorary Members of the Society.

9. The Council shall meet at least twice a year, and not less than seven days' notice of any meeting shall be sent by post to every member of the Council.

10. There shall be a Literary Director to be appointed and removable by the Council. The Council may make any arrangement for remunerating the Literary Director which they may think reasonable.

11. It shall be the duty of the Literary Director (but always subject to the control of the Council) to supervise the editing of the publications of the Society, to suggest suitable editors, and generally to advise the Council with respect to carrying the objects of the Society into effect.

12. Each member shall be entitled to one copy of every work published by the Society as for any year of his membership. No person other than an Honorary Member shall receive any such work until his subscription for the year as for which the same shall be published shall have been paid. Provided that Public Libraries and other Institutions approved by the Council may, on agreeing to become regular subscribers, be supplied with the past publications at such reduced subscription as the Council may from time to time determine.

13. The Council shall appoint an Hon. Secretary and also an Hon. Treasurer and such other Officers as they from time to time think fit, and shall from time to time define their respective duties.

14. The funds of the Society, including the vouchers or securities for any investments, shall be kept at a Bank, to be selected by the Council, to an account in the name of the Society. Such funds or investments shall only be dealt with by a cheque or other authority signed by the Treasurer and countersigned by one of the Vice-Presidents or such other person as the Council may from time to time appoint.

15. The accounts of the receipts and expenditure of the Society up to the 31st of December in each year shall be audited once a year by two Auditors, to be appointed by the Society, and the report of the Auditors, with an abstract of the accounts, shall be circulated together with the notice convening the Annual Meeting.

16. An Annual General Meeting of the Society shall be held in March 1896, and thereafter in the month of March in each year. The Council may upon their own resolution and shall on the request in writing of not less than ten members call a Special General Meeting. Seven days' notice at least, specifying the object of the meeting and the time and place at which it is to be held, shall be posted to every member resident in the United Kingdom at his last known address. No member shall vote at any General Meeting whose subscription is in arrear.

17. The Hon. Secretary shall keep a Minute Book wherein shall be entered a record of the transactions, as well at Meetings of the Council as at General Meetings of the Society.

18. These rules may upon proper notice be repealed, added to, or modified from time to time at any meeting of the Society. But such repeal, addition, or modification, if not unanimously agreed to, shall require the vote of not less than two-thirds of the members present and voting at such meeting.

July 1901.

FORM OF APPLICATION FOR MEMBERSHIP.

To Mr. Francis K. Munton, Montpelier House, Twickenham,
Honorary Treasurer of the Selden Society.

I desire to become a member of the Society, and herewith send my cheque for One Guinea, the annual subscription [*or* £21 the life contribution] dating from the commencement of the present year. [I also desire to subscribe for the preceding years , and I add one guinea for each to my cheque.]

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